

LAW-BOOKS Printed for J. WALTHOE.

F O L I O.

- 1 **S**erjeant *Salkeld's Reports*, 2d Edit. in 2 Vol.
- 2 *Hawkins of the Pleas of the Crown*, 2 Vol.
- 3 *Farresley's Reports in the first Year of Queen Anne.*
- 4 *Modern Cases second and third of Queen Anne.*
- 5 *Lutwych's Reports and Entries*, 2 Vol.
- 6 *Sir Bartholomew Shower's Reports*, in 2 Vol.
- 7 *Sir Creswell Lewinz's Reports, French and English.*
- 8 *Saunders's Reports, French and English.*
- 9 *Sir John Keyling's Reports.*
- 10 *Sir Orlando Bridgman's Conveyances*, 4th Edit.
- 11 *D'Anvers's Abridgment of the Law*, in 2 Vol.
- 12 *A Collection of Entries by Sir Creswell Lewintz.*
- 13 *Cases in Chancery, compleat in 3 Parts*, 2d Edit.
- 14 *Keble's Reports*, 3 Vol.

O C T A V O.

- 1 *Cursus Cancellariae, or Proceedings in Chancery,*
in Octavo 1715.
- 2 *Reports in Chancery*, 3 Vol. 8vo. 2 Edit.
- 3 *Hale's History and Analysis of the Law*, 2d Edit.
- 4 *The Rules of all the Courts at Westminster*, 2 Vol.
- 5 *The Law concerning Trials.*
- 6 *Scroggs's Practice of Courts-Leet and Courts-Baron.*
- 7 *The Law against Bankrupts*, 3d Edit.
- 8 *The Law of Ejectments*, 2d Edit.
- 9 *Watson's Clergyman's Law*, 2 Vol. 2d Edit.
- 10 *The Law of Last Wills and Testaments.*
- 11 *The Impartial Lawyer.*
- 12 *The Compleat Sheriff*, 2d Edit.
- 13 *The new Retorna Brevium.*
- 14 *The Modern Conveyancer*, in 3 Vol. 3d Edit.
- 15 *The Compleat Attorney and Solicitor*, 4th Edit.
- 16 *An exact Copy of the Court-Hand.* Price 1 s.

LAW-BOOKS Printed for J. WALTHOE.

F O L I O.

- 1 **S**erjeant *Salkeld's Reports*, 2d Edit. in 2 Vol.
- 2 *Hawkins of the Pleas of the Crown*, 2 Vol.
- 3 *Farresley's Reports in the first Year of Queen Anne.*
- 4 *Modern Cases second and third of Queen Anne.*
- 5 *Lutwych's Reports and Entries*, 2 Vol.
- 6 *Sir Bartholomew Shower's Reports*, in 2 Vol.
- 7 *Sir Creswell Lewinz's Reports, French and English.*
- 8 *Saunders's Reports, French and English.*
- 9 *Sir John Keyling's Reports.*
- 10 *Sir Orlando Bridgman's Conveyances*, 4th Edit.
- 11 *D'Anvers's Abridgment of the Law*, in 2 Vol.
- 12 *A Collection of Entries by Sir Creswell Lewintz.*
- 13 *Cases in Chancery, compleat in 3 Parts*, 2d Edit.
- 14 *Keble's Reports*, 3 Vol.

O C T A V O.

- 1 *Curfus Cancellaria, or Proceedings in Chancery,*
in *Octavo* 1715.
- 2 *Reports in Chancery*, 3 Vol. 8vo. 2 Edit.
- 3 *Hale's History and Analysis of the Law*, 2d Edit.
- 4 *The Rules of all the Courts at Westminster*, 2 Vol.
- 5 *The Law concerning Trials.*
- 6 *Scroggs's Practice of Courts-Leet and Courts-Baron.*
- 7 *The Law against Bankrupts*, 3d Edit.
- 8 *The Law of Ejectments*, 2d Edit.
- 9 *Watson's Clergyman's Law*, 2 Vol. 2d Edit.
- 10 *The Law of Last Wills and Testaments.*
- 11 *The Impartial Lawyer.*
- 12 *The Compleat Sheriff*, 2d Edit.
- 13 *The new Retorna Brevium.*
- 14 *The Modern Conveyancer*, in 3 Vol. 3d Edit.
- 15 *The Compleat Attorney and Solicitor*, 4th Edit.
- 16 *An exact Copy of the Court-Hand.* Price 1 s.

Well. in Hunter. Inner Temple

TENANTS LAW:
OR, THE
L A W S
CONCERNING
Landlords, Tenants, and Farmers.
(VIZ.)

1. Of the several Kinds of Tenures, as well Freehold as Copyhold.
2. Of Leases, Covenants, Surrenders, Assignments, &c.
3. Of Rent: Acceptance and Extinguishment thereof.
4. Of Crops growing, and Trees blown down, &c. who are entitled to them.
5. Of Distresses, Replevins, and Relcous.
6. Of Waste in Buildings, Lands, Woods, &c. whether voluntary or permissive.
7. Of Common for Cattle.
8. Of Frauds in buying and selling Lands or Goods.
9. Of Trespasses and Nuisances.
10. Of the late Act to prevent Fires; and Rules to be observed in erecting of new Buildings about London.

Useful for all Landlords, Tenants, Farmers, Stewards, Agents, Solicitors, and others, concerned in the buying, selling or letting of Estates.

D The Eighth Edition.
In which are added all such Acts of Parliament and Resolutions as relate to these Subjects down to the present Year 1722.

In the S A V O R:
Printed by Eliz. Nutt, and R. Golling, (Assigns of Edw. Sayer Esq;) and sold by J. Walthoe, in the Temple Cloisters; and J. Walthoe Junr, against the Royal Exchange in Cornhill. 1722.

9
UX
918
TEN

TX
-T289
ed8

DEC 30 1907

R. W. Greene

W. at auction Sept

1834

TO THE
READER.

THIS small Treatise
having met with
a very favourable
Acceptance, being the first
that was ever printed in its
Kind; hath encourag'd the
Publisher hereof to revise,
correct, and supply every
Thing that he thought was
wanting to make it the
most compleat of any Book
now extant: In order there-
unto, he hath carefully exa-
mined the Authorities by

To the Reader.

the respective Books of the Law, and hath added many late adjudged Cases proper to the Subject, by placing them under their convenient Heads and Chapters. And Lastly, hath added several new Chapters, with the Acts of Parliament that relate to *Landlords and Tenants*, and what concerns the preventing the Destruction of Houses by Fire, and of the new Building of Houses within the Bills of Mortality.

THE
CONTENTS.

CHAP. I.

A *Division of the several
Kinds of Tenants and Te-
nures,* Page 1

CHAP. II.

*Of Leases, Covenants and Condi-
tions, Proviso's and Reservations,
Surrenders and Assignments of
Leases.* 66

CHAP. III.

*Of Payment of Rent, Acceptance
and Extinguishment thereof; De-
mands,*
A 3

The Contents.

mands, Entries, Dates, Continuances, Limitations and Determinations of Leases, Page 120

CHAP. IV.

Of Corn sown, who shall have the Crop. Of Estovers, and Trees blown down. Of Distresses: What Things may be distrained, and how used: Who may take a Distress, for what Cause, when and where: With the late Acts of Parliament for Sale of Goods, &c. distrained for Rent. 151

CHAP. V.

Of Rescous, in what Cases it may be lawful. Of Replevins, how to be sued out; and of Avowries to Declarations upon Replevins, 202

CHAP. VI.

In what Cases a Tenant or other may be said to commit Waste in Houses, Gardens, Woods, Pastures, Orchards,

The Contents.

*chards, &c. and what Waste
shall be punishable, and what not :
With some Observations concern-
ing the cutting, spoiling, and
stealing of Wood, Page 216*

C H A P. VII.

*The Doctrine concerning Common
of Cattle, &c. between Landlord
and Tenant, &c. 234*

C H A P. VIII.

*Several Observations upon the Sta-
tute 29 Car. 2. which was made
to prevent Frauds and Perjuries,
and relates to Bargains in buying
and selling Goods and Chattels,
280*

C H A P. IX.

*Several necessary Matters relating to
Farmers, and such as keep and
feed Sheep, and other Beasts; as
also relating to Actions for Nu-
sances done by one Tenant to ano-
ther, &c. 288*

C H A P.

The Contents.

C H A P. X.

*Some farther Observations relating to
Covenants in Leases, &c. With
several modern resolved Cases re-
lating to Pleadings in Covenants
upon Leases, Page 302*

C H A P. XI.

*Concerning the late Acts of Par-
liament, to prevent Destruction of
Houses by Fire ; and of the new
building of Houses within the
Bills of Mortality, 323*

THE
L A W S
CONCERNING

Landlords and Tenants:

C H A P. I.

A Division of the several Kinds of
Tenants and Tenures.

EVERY Subject of this King-<sup>The Kinds
of Tenants
and Te-
nures.</sup>dom that occupieth any
Lands, or inhabiteth in any
House or Tenement, is said
to be a Tenant, *Tenens à Tenendo*; be-
cause he must hold of some Lord or
other.

And divers and various are the
Natures and Kinds of Tenants and
Tenures in this Land at this Time;
although they have been more nu-
merous, and were indeed of exceſ-

B five

five Slavery to the People, so that their exorbitant Cruelty hath caused their Dissolution.

Villenage. Those which are ceased to be, are Tenure in *Villenege*, where the Lord might vassal and enslave his Tenant's Person at his Pleasure, but not kill him,

Pillenage. *Pillenage*, where the Lord might pillage his Tenant of all his Goods.

Free-Alms. *Frank Almoigne*, or Free-Alms, was a Tenure begun, and had its Original, either at or soon after the Foundation of *Monasteries* and Religious Houses, and extirpated with them. The Nature of it in old Time was, when a Man being seised of Lands or Tenements in his *Demesne* as of Fee, of the same Land did enfeoff some Abbot or Prior and their Convents, or some Dean and Chapter and their Successors, or some Parson of a Church and his Successors, or any other Religious Person who was in a Capacity to take such Alms, to hold the same Lands and Tenements to them and their Successors, in *Liberam Eleemosynam*, in Free-Alms, or *Frank Almoigne*, of the Grantor and his Heirs: And such as held in Free-Alms, were bound, in Consideration of such Grant or Feoff-

Ch. 1. Landlords and Tenants. 3

Feoffment, to perform certain Divine and Religious Services and Exercises, for the Souls Good, Life and Prosperity of the Grantors, and all others.

And they confirmed all their Grants with grievous *Anathema's* and Imprecations against all such as should in any ways diminish or take away such their Grant, or convert the same unto any other Use; which some believe to be none of the least Causes, why Purchasers of Church-Lands find such ill Success, and seldom do enjoy it to the Fourth Generation.

But, as I said before, this Tenure and the Religious Houses ended together, or immediately one after the other, so that none can grant any Lands or Tenements in *Liberam Electionem* at this Day.

Tenure in *Capite* and *Knight's Service*, was also by Act of Parliament, *Anno 12 Car. 2. cap. 24.* (together with the Court of Wards, which was dependent upon that Service) taken away, and all those Tenures are now turned into Free and Common *Socage*.

Also Tenure by *Grand Serjeanty* was a kind of Tenure by *Knight's Service*.

Eſcuage. Service, and ſo was Tenure by *Eſcuage*, becauſe the King had the Wardſhip and Marriage of ſuch Tenants under Age; and tho' theſe Tenures are taken away by the ſaid Stat. 12. Car. 2. yet the Honorary Services of Grand Serjeanty ſtill continue.

Petit Serjeanty. But 'tis ſaid, That Tenure by *Petit Serjeanty* is no more than a *Socage-Tenure* in effect, becauſe the Tenant is not thereby bound to do any Thing in his proper Perſon touching the Wars, and had not Wardſhip, Marriage or Relief annex'd; yet this ſeems to be alſo taken away by the ſaid Statute.

So that the more uſual Tenants amongſt us at this Day, are,

Fee Simple. Tenants in *Fee-Simple*, and in *Fee-Tail*.

Fee-Tail. Tenant in *Tail* after Poſſibility of Iſſue extinct.

Dower, Courteſie, Term of Life, for Years. Tenant in *Dower*, and by the *Courteſie* of England; Tenant for Term of Life or for Years, upon Leaſe in Writing, or Leaſe-Parol.

At Will. Tenant *at Will* by the Common Law, or by Cuſtom.

Sufferance. Tenant *at Sufferance*.

Copy. Tenant by *Copy of Court-Roll*.

Ch. I. Landlords and Tenants. 5

Tenants in Coparcenary, Joint-Coparcen-
Tenants, and Tenants in Common. nary.

Fee-Simple.

A Man that is seised in Lands or *Fee-Simple*.
Tenements, to hold to him and his
Heirs for ever, is said to be Tenant
in Fee-Simple; and such an Estate is
called *Feodum Simplex*. The Word
Feodum in Latin, being taken to fig-
nifie Inheritance; and *Simplex* im-
plies pure, plain or unmix'd: And
indeed Fee-Simple is the most pure
Holding; that is, being unmix'd, or
entangled in it self. But as the whi-
test Colour will be soonest stained,
so is this pure Tenure most subject
to be spotted and involved in Trou-
bles above any other; which the
Law calls *Incumbrances*. Lit. Ten.
Li. I. Cap. I.

If a Man were to deal as Purchaser *Incumbrances of Fee-Simple*.
with a Tenant in Fee Simple, he hath
a happy Bargain if he meets with a
Simple Tenure and a Simple Tenant;
I mean, the one free from Incum-
brances, and the other from Deceit;
which many have found it a difficult
Thing to obtain.

I shall therefore, by way of Cau-
tion, set down the several Troubles

6 The *L A W S* concerning Ch. 1.

and Incumbrances this pure Tenure, called *Fee-Simple*, is subject unto.

What Incumbrances.

Fee-Simple may be incumbered with several Judgments, Statutes-Merchant, and of the Staple, Recognizances, Mortgages, Wills, Pre-contracts, Bargains and Sales, Feoffments, Fines, Amerciaments, Joinders, Dowers, and many other fraudulent Conveyances, if a Knave once possess it; and last of all, may be quite forfeited for Treason.

Forfeited.

But *Fee-Simple* being free from any of the aforementioned Incumbrances, is the most free, absolute and ample Estate of Inheritance that any Man can have; and therefore a Tenant in *Fee Simple* is said to be *Seisitus in Dominico suo ut de feodo*; that is, seised in his Demesne as of *Fee*.

Tenant in Fee-Tail.

Fee-Tail.

All Freehold Inheritances before the Statute of *Westminster 2. cap. 1. De Donis Conditionalibus*, were *Fee-Simple* at the Common Law; so that Tenant in Tail was instituted by Force of that Statute: By which Statute there is a twofold Tenant in Tail, viz.

General

13 Edu 1.

Ch 1.

ad 1285

General and Special Tail.

He is said to be Tenant in Gene-General.
ral Tail, who holdeth Lands or Te-Tail.
nements to him, and to the Heirs of
his Body begotten.

For if in this Case he marry many
Wives, and have Issue by them all;
every one of them may (the elder
dying) come to inherit this Land,
because every one is the Issue engend-
red of his Body.

It is the same Case, if Lands or
Tenements be invested upon a Wo-
man and the Heirs of her Body, and
she have several Husbands, and Chil-
dren by them all, every one of them
is in a Possibility to inherit those
Tenements, being all begotten of
her Body.

But where Lands or Tenements
are settled upon a Man and his Wife, *Special*
and the Heirs of their Bodies be- *Tail.*
tween them two lawfully to be be-
gotten, this is Tenant in Special
Tail; because in this Case none can
inherit but such Children as are by
this Man begotten upon the Body of
this Wife named in the Grant: And
if that Wife die, and the Man taketh
another Wife, and hath Issue of her
Body,

Body, the Issue by the later Wife cannot inherit by Vertue of such a Grant. And if the first Husband die, and the Wife marry again and have Issue by a second Husband, that Issue cannot inherit. *Lit. Ten. l. 1. c. 2. f. 5. a.*

*Special
Tail with
Limitati-
on.*

There be several other Estates in Special Tail, according to the Devises, Limitations and Conditions, invented and settled by the *Donor*; as sometimes to a Man and his Wife, and the Heirs Males of their Bodies, between them two to be begotten: In this Case the Females cannot inherit. *Et e contra*: For if limited to Heirs Females of their Bodies, then the Males cannot inherit.

So that if Lands be invested upon a Man and his Heirs Males of his Body, and he hath Issue two Sons, and dieth, the eldest enters according to the Grant, and hath Issue a Daughter, and dieth; this Daughter shall not inherit the Land, but the Brother, because he is the Heir Male,

*Tail be-
comes ex-
tinct.*

And if a Man hath Lands granted to him, and to his Heirs Males of his Body, and he hath no Son, but only a Daughter, and the Daughter hath a Son, and dieth, living her Father, and after that the *Donee* dieth; in this

this Case the *Donee* dying without Issue Male in the Law, the Son of his Daughter, which is the Grandchild, shall not inherit, but the Entail is extinct, and the Land shall revert to the *Donor*.

These Grants in Tail are the Cause *Tail Te.* of much Strife, and stir up many *nunes In-* chargeable Suits, tho' in my Judgment they are useless. For the Intent of the *Donor* is seldom observed in them, he intending to preserve the Memory of his own Name to Perpetuity; which cannot be, since a Fine and Recovery will now bar and *do*ck it:

For the said Statute *De Donis, &c.* Stat de being made 13 *Ed. 1.* established a *Donis.* general Perpetuity in Estates descendible for all that would make it; so that most Estates were consequentially entailed *in perpetuum* by the *Donor* on the Heirs of the *Donee*; which being against the Policy and Reason of the Common Law, became the Occasion of many Mischiefs; for Lords were often thereby defeated of their Escheats and other Duties and Services, and Purchasers and Tenants often lost their Estates, and were evicted by the Heirs of the Grantors and Lessors;

for the Ancestor could not bind his Estate farther than for his own Life.

These Mischiefs were often attempted to be redressed in divers Parliaments, and divers Bills to that End were exhibited, which were always rejected on one Pretence or other: But the true Reason was, The Lords and Commons knowing that their Estates-Tail were not forfeitable for Felony or Treason (as Estates in Fee-Simple were); and finding they were not liable to the Debts, Incumbrances, Sales, Alienations or Leases of their Ancestors, did always reject such Bills.

*Common
Recovery.*

This continued till about the 12th of Ed. 4. when the Judges upon Consultation among themselves did agree and resolve, That an Estate-Tail might be dock'd and barr'd by a Common Recovery, and that by Reason of the intended Recompence in Value, a Common Recovery was not within the Restraint made by the said Statute *De Donis Conditionabilibus*.

If Tenant in Tail General or Special die without Issue, the *Donor* or his Heirs shall enter as in their Reversion; for in every Gift in the Tail,

Ch. 1. Landlords and Tenants. 11

Tail, without more saying, the Re-Entry by version of the Fee-Simple is in the ^{the Donor.} Donor. *Lit. Ten. l. 1. c. 2. f. 3.*

Tenant in Tail after Possibility of Issue extinct.

When Lands and Tenements be Possibility granted to a Man and his Wife in ^{of Issue con-} Special Tail, and one of them die ^{tinct.} before they have Issue, the Survivor, is Tenant in Tail after Possibility of Issue extinct; but if they have Issue, during the Life of the Issue the *Survivor* cannot be said to be Tenant in Tail after Possibility of Issue extinct. But if the Issue die without Issue, and leave none to inherit by Vertue of the Entail, then the surviving *Donee* is Tenant in Tail after Possibility of Issue extinct. *Lit. Ten. l. 1. ca. 3. f. 7.*

And none can be Tenant in Tail *Donee in* after Possibility of Issue extinct, but ^{Special} one of the *Donees* in Special Tail; ^{Tail} which Tenant in Tail after Possibility of Issue extinct is not chargeable for committing of Waste; because the Inheritance was once in him; but if he doth alien in Fee, it is a Forfeiture of his Estate, and the Heir in Reversion may enter. For several

several other Privileges and Qualifications of this Tenant, *Vid. Co. Lit. f. 27. b. Fitz. Waste 125. Kitch. f. 228.*

Tenant by the Courtesie of England,

*Tenant by
the Cour-
tesie.*

When a Man marries a Wife seised in Fee-Simple, or in general Fee-Tail, or one that is Heiress unto Lands or Tenements in Special, and hath a Child by the same Wife Male or Female born alive, and the Wife die; whether the Child be living or dead, the Husband shall hold the same Lands during his Life, as Tenant by the Courtesie of *England*, which is a Tenure used in none other Country but *England*: And altho' the Child die as soon as it is born, if it were but heard cry, the Husband shall hold the Lands after his Wife's Decease during his Life as Tenant by the Courtesie; the Crying of the Child being a sufficient Testimony of its being born alive. *Lit. l. 1. ca. 4 f. 8.*

Tenant in Dower.

*Tenant in
Dower.*

This kind of Tenant is always of the Feminine Gender; and is, when
a Man

a Man who is seised of Lands or Tenements in Fee-Simple, or in General Tail, or his Heir in Special Tail, marries a Wife and dies; the Wife, after the Death of her Husband, shall have, during her Life, the third Part of such Lands or Tenements as her Husband had during the Coverture, whether she had any Issue by him or not, so she be above Nine Years of Age at her Husband's Death. *Lit. l. 1. ca. 5.* This is Dower *Dower at* at the Common Law, but by Custom *Common* in many Places it is otherwise; *Law.* for in some Places she shall have the half, and in others the whole; and in all these Cases she is Tenant in Dower.

In *Kent* it is the Custom for the *Dower by* Woman to have half her Husband's *the Custom.* Lands *durante viduitate*, so long as she continues a Widow, and without Child; but if she marry again, she loses all: So likewise is the Custom there, if a Man marry a Wife having an Estate in Lands, &c. and she die without Issue, he shall have half while he remains sole; but if he marry again he loseth all. And in *Kent* they say, the Reason thereof is, because they do not love that their Lands should help to maintain any
 Chil-

Children, but such as are of their own Getting; but how sure they are hereof, *Ignoramus*.

That by the Custom of some Towns or Boroughs, she shall have the whole. See more of this, *Co. Lit.* 31, 33. That there needs no Livery and Seisin to an Assignment of Dower. *Co. Lit.* 35. And that it must be of some Part of the Land, or of a Rent issuing out of the same. *Ibid* & *Dyer* 91. See more in *Lit.* on *Ten.* l. 1. ca. 6. f. 11. and *Co. Lit.* on the Chapter of *Dower*.

The Wife is not barr'd of her Dower tho' she accept a Legacy bequeath'd her instead of it. One devised a Sum of Money to his Wife on Condition she would renounce her Dower; she accepted of the Legacy, and yet the Chancery decreed that she was not barr'd of her Dower thereby: It was farther held that she being an Orphan, and her Portion remaining still in the Chamber of *London*, it shou'd be consider'd as a Debt due to her before Marriage, and remain to her; and that the Executors of the Husband were not entitled to it. *Pheasant v. Pheasant, in Canc. Trin. 22 Car. 2.* Cases in Chancery, 1st Part, p. 181.

Tenant for Life.

He that holdeth Lands or Tenements for the Term of his own Life, or for the Term of the Life of any other Person: In this Case the Lessee either for Term of his own Life, or for another's, is Tenant for Term of Life: And this Tenant for Life hath in him the Freehold, this being the lowest Degree of Freehold. *Lit. Ten. l. 1. ca. 6.*

If a Man be Tenant for Term of his own Life, he hath a higher Estate than he that is Tenant for the Life of another. *Co. Lit. 42, a.*

Note, A Lease for Life must be *Livery*, executed with Livery, because an Estate for Life is a Freehold. See after p. 18.

In a Grant for Term of Life, it is *Lessor and* said to be from Lessor to Lessee. *Lessor,* *Note,* there is Feoffor and Feoffee, Donor and Donee, Lessor and Lessee; there is likewise Grantor and Grantee, Obligor and Obligee, Mortgagor and Mortgagee.

He that enfeoffeth another in Feoffor and Lands or Tenements, is called the Feoffee. Feoffor; he to whom the Feoffment is made, is the Feoffee. So

Donor and Donee. So when a Man giveth Lands or Tenements to another in Tail, he is called the *Donor*; and he to whom the Gift is made, is the *Donee*.

Grantor and Grantee. And likewise he that letteth to another any Lands or Tenements to hold for Term of Life, for Years, or at Will, is called the *Lessor*; and he to whom the Lease is made, is called *Lessee*: Which Lessee for Life (as I said before) is Tenant of Freehold,

Mortgagor and Mortgagee. So also he that pawneth Lands to another, is called *Mortgagor*; and he to whom it is pawned, is called the *Mortgagee*.

Tenant for Years.

Tenant for Years. Tenant for Term of Years, is when a Man demiseth, and letteth any Lands or Tenements to another to hold for a certain Number of Years agreed upon between the Lessor and the Lessee; by Force and Vertue of which Lease, the Lessee entreth in to the said Tenements.

This Lease for Term of Years may be granted by Word of Mouth, and this is called a *Lease-Parol*; which formerly bound the Lessor so long as the Term was accorded for, if the
Witnesses

Witnesses lived to prove the Lease-Parol.

But now the more safe and usual Way is to take a Lease by Deed indented, which needs no other execution but only Sealing and Delivery. For by Vertue of that Lease, the Tenant may enter whensoever he will.

Also, by the Statute of Frauds and Leases Perjuries, 29 Car. 2. c. 3. Leases-Parol, ^{rel.} or by Word of Mouth, will be void if they exceed Three Years from the Making; yet two Third Parts of the improved Value of the Thing demised, must be reserved to the Landlord. See after, Chap. 2. and Chap. 8.

And no Leases, Estates or Interests, either of Freehold or Terms for Years, or any uncertain Interests not being Copyhold or Customary Interests, shall be granted or surrendred, unless it be by Deed, or Note in Writing, signed by the Party so granting or surrendring the same, or their Agents lawfully authorized by Writing, or by Act and Operation of Law.

And no Action shall be brought to charge any Person upon any Contract or Sale of Lands, Tenements or Hereditaments, or any Interest in or concerning them, unless the Agreement upon which
the

the Action shall be brought, or some Memorandum or Note thereof shall be in Writing, and signed by the Party, or some other Party by him lawfully authorized. See Chap. 8. for further Observations on this Statute.

Mortmain. Every one seised of an absolute Estate in Fee-Simple in his own Right, may make a Lease for as many Years as he pleaseth, provided it be not to a Body Politick, lest by exceeding, it seem a Devise in *Mortmain*, and some say for a Hundred. Others, if but for eighty Years, 'tis *Mortmain*; and in this Case the Chief Lord may enter for the Forfeiture, unless they have purchased Licence from the King and the said Chief Lord. See 2.H.8. *Mortm.* 39. Stat. 23.H.8. 10, &c. Fitz. 221 F. 222. D. 223. E.

But now by the Stat. 7 & 8 W. 3. c. 37. The King alone, his Heirs and Successors, may grant to any Person or Persons, Bodies Politick or Corporate, their Heirs and Successors, Licence to alien in *Mortmain*, and also to purchase, acquire, take and hold in *Mortmain*, in Perpetuity or otherwise, any Lands, Tenements, Rents, or Hereditaments whatsoever, of whomsoever the same shall be holden; and such Lands, Tenements, &c
fu.

so aliened or acquired and licensed, shall not be subject to any Forfeiture by reason of such Alienation or Acquisition.

A Lease for Term of Life must *Livery and* be executed by *Livery and Seisin*: *Seisin in* because the Freehold passeth with *Lease for* that Lease, which it cannot do with- *Life.* out *Livery and Seisin.* *h. 15*

This was the Case of *Allen* and *Waller* at the *Lent-Assizes* at *Maidstone* 1654. *Waller* brought an *Ejectione Firme* against *Allen*; the Defendant proved a Lease-Parol at a certain Rent during his Life: Which last Word of the Defendant's Witness gave the Verdict against him, because none can be Tenant for Life, without *Livery and Seisin.*

Also if a Man make a Lease to one for Years, the Remainder to another for Life, or in Tail, or in Fee, here the Lessor ought to make *Livery and Seisin* to the Lessee for Years, or else nothing shall pass to him in Remainder, though the Lessee enter and enjoy his Term of Years; but the Freehold and the Reversion remains in the Lessor. But if the Lessor make *Livery and Seisin* to the Lessee, then the Freehold passes over to them in the Reversion, according to the Grant. For the manner of *Livery*

Livery and Seisin, see *Pract. Reg.* last published, 397.

That *Livery* must pass a present Freehold, and cannot commence in futuro, Hob. 171.

How a Corporation may make *Livery and Seisin* by Attorney. *Pract. Reg.* 397.

If a Tenant for Years of Lands consent, that *Livery and Seisin* shall be made unto him that hath purchased the Reversion of those Lands let unto him, and it be made accordingly, this is a good *Livery and Seisin* to make the Reversion pass, altho' the Tenant for Years do not go off from the Land at the time when the *Livery and Seisin* was made. *Ibid.* See after.

*Lease for
Years takes
Rights af-
ter the De-
livery.*

Likewise if a Man make a Lease of Lands or Tenements to another for Term of Years, and the Lessor die before the Lessee enter into the Tenements; nevertheless he may enter, notwithstanding the Death of the Lessor, because the Lessee hath Right to the Tenements by Vertue of his Lease, immediately after the Sealing and Delivery of it: *Vide Chap. 2.*

Tenant at Will.

When a Man demises Lands to *Tenant at* another to hold to the Lessee at *Will*. the Will of the Lessor, *vel econtra*, and by Vertue of this Lease the Lessee is in Possession; here the Lessee is Tenant at Will, and hath no certain Estate in the Tenements he holdeth, but the Lessor may eject him when he pleases; neither can the Lessor force him to stay longer than he pleases. *Co. Lit. 55. n.*

But if the Lessee sow the Land, and the Lessor eject him out afterwards *He that sows shall* before the Corn be ripe, the Lessee *reap, if* shall nevertheless have his Crop, and *Tenant at Will.* shall have free Egress and Regress to cut and carry it away, because he knew not when the Lessor would enter upon him.

It is said, That if one be in Possession of the Lands of another, and hath usually paid a Rent unto him for these Lands, altho' it cannot be expressly proved that the Lands were demised at Will to him that is thus in Possession of the Lands, *viz.* That he should hold them as long as both Parties should please; yet if the Payment of a Quarter or Half a Year's Rent

Rent can be proved, this will be a good Evidence of a Lease at Will.
Pract. Reg. (the 4th Edition) 403.

*Not so in
 Tenants for
 Years.* But if a Tenant for Years sow his Land so near the End of his Term, that his Lease expire before the Corn be ripe, he shall not come to reap it; but the Lessor, or other who hath the Reversion, shall have the Crop, because the Lessee knew certainly the End and Determination of his Term and Lease.

In like manner if a House be let to a Man to hold at Will, and the Lessee enters the House, and bringeth in thither his Goods and Household-stuff, and afterwards the Lessor ejects him out; here he shall have Liberty of Egress and Regress to fetch away his Household-stuff, Utensils, &c. and if such Tenant die, the like Liberty is given to his Executors, &c. *Lit. Ten.* p. 19.

Also if one seised in Fee-Simple, Fee-Tail, or for Term of Life, in an House, and hath Goods in that House, and makes his Will, appointing his Executors, and dies; now to whomsoever the House descends, the Executors shall have Liberty in some reasonable Time to enter and carry away the Goods.

And if a Man by Deed of Feoffment grants certain Lands to another, and delivers him the Deed, but executes it not by *Livery and Seisin*, the Feoffee in this Case may enter on that Land, and hold it at the Will of the *Feoffor*; but the *Feoffor* may eject him out again when he will.

If a Man dwell in a House as *Tenant at Will*, he is not bound to repair the said House, as a Tenant for Term of Years is bound to do. *Will not bound to Repairs.*

But if a Tenant at Will shall commit voluntary Waste, as to pull down Houses, and cut, grub, fell, or destroy Trees, the Lessor may bring his Action of Trespass against him for so doing: For tho' a Tenant at Will is dispunishable for permissive Waste, yet he shall answer for voluntary Waste. *Vide post, Chap. 6.* Also the Lessor upon a Lease at Will, if he hath reserved a yearly Rent, may either distrain, or bring an Action of Debt for the same, if it be in Arrear, which he pleases.

Tenant at Sufferance.

Tenant at Sufferance is he who comes in by lawful Lease, and keepeth Possession after his Lease is expired, *Tenant at Sufferance.* and

and wrongfully holdeth over: As Tenant for Life of J. S. who holdeth over after the Death of J. S. *Co. Lit. f. 57. b. Kitch. f. 238.*

The Lessor cannot have an Action of Trespass against a Tenant at Sufferance before his Entry into the Premises. *Co. Lit. 57. b.*

Also if one leases at Will and dies, and the Lessee continues in Possession, tho' the Lease be determined by the Death of the Lessor, yet the Lessee is Tenant at Sufferance. *Ibid.*

But if the King's Lessee for Years or Life holds over his Term, yet he is not Tenant at Sufferance, but an Intruder; for no Laches of Entry may be imputed to the King. *Ibid.*

And if a Guardian after full Age of the Heir, continues in Possession, yet he is not Tenant at Sufferance, but an Abator; for his Estate is created by Act in Law. *Ibid.*

If the Husband leases for Years the Lands of his Wife, rendring Rent, and then the Wife dies, the Husband shall not have Debt for the Rent incurr'd after, for his Estate is gone; and it seems the Lessee is become Tenant at Sufferance. 1 *Roll. Abr. 591. B. 4.*

If one covenants to permit and suffer another to have, hold and occupy certain Lands, *à die datus*, for Life; this is but a Covenant, and no Lease, and so the Law expects no Livery thereupon; and therefore he shall not be Tenant at Will, but only by Sufferance. 1 *Roll. Abr.* 859. T. 10.

Also if *A.* bargains and sells Lands to *B.* by way of Mortgage, on Condition to pay several Sums yearly for certain Years; and there is a Covenant in the Deed, That *B.* shall not take any Profits of the Land, till Default in some of the Payments: This is no Lease at Will; for it is not that *A.* shall take the Profits, but only that *B.* shall not take them, which sounds in Covenant, and so *B.* is Tenant at Sufferance only, and not Tenant at Will. *ibid.* 12.

Tenant by Copy of Court-Roll.

This is a very ancient Tenure, and depends only upon Custom; and there are so many and various Kinds of Customs in Copyholds in several Manors and Countries, that it would take up a large Volume to Discourse of them all; which is not

C

now

Custom

quid, vide
post, 30.

now our present Intention, but we shall refer that Subject to a further Opportunity, and here shortly in general Terms set forth the Nature of a Tenant by Copy of Court-Roll. In a Manor wherein there is a Custom, and hath been so used Time out of Mind (for nothing can be a Custom, unless it be *Tempore quo non extat Memoria*, Time out of Mind) that certain Tenants within the said Manor have used to have Lands or Tenements, to hold to them and their Heirs in Fee-Simple or Fee-Tail, or for Term of Life, or upon any other Condition, at the Will of the Lord after the Custom of the same Manor, such Tenants are called *Copyholders*; that is, Tenants by Copy of Court-Roll: For a Copy of the Court-Roll is all the Evidence they have for their Estates in the said Lands. *Lit. Ten. lib. 1. cap. 9.*

Copyhold-
er cannot
alien by
Deed.

Now a Tenant by Copy of Court-Roll may not alien his Estate by Deed; for if he do, it is a Forfeiture to the Lord, and the Lord may enter and take the Forfeiture. *Ibid. & Co. Lit. 59. a.*

But if any Tenant by Copy of Court-Roll will alien his Lands, he may

may do it by a Surrender into the ^{But by} Hands of the Lord, to the Use of ^{Surrender} him that shall have it: and any kind ^{to the Lord,} of Estate that a Freeholder can make of his Land by Deed, a Copyholder may do the same by Surrender. *Lit. & Co. ut supra.*

The Tenant by Copy of Court-Bound to Roll is also bound by the Custom to ^{repair.} repair his Houses; and if he suffer any Tenement or House to fall down for want of Repair, or if he pull it down, he forfeits his Copyhold to the Lord of the Manor.

This Tenant is as well inheritable ^{Inheritable,} as he that hath Frank-Tenement by the Common Law, if he observe the Custom of the Manor, and perform and pay his Services. 4. Co. Rep. 21, 22, &c. See after 30, &c.

There are Seven Properties incident for Maintenance of a good Custom.

First, it must be reasonable.

Secondly, It must be certain.

Thirdly, It must be according to Common Right.

Fourthly, It must be on good Consideration.

Fifthly, It must be compulsory.

Sixthly, it must be without Prejudice to the King.

Seventhly, It must be to his Profit that claimeth the same.

In Customs, there is User, Non-User, Abuser and Interuser.

User, Is when, according to Time and Occasion, a Custom is used.

Non-User, Is when, for want of Time and Occasion, or through Negligence or Forgetfulness, a Custom is not used.

Abuser, Is when a Custom is ill used; for as *User* doth nourish a Custom, so doth *Abuser* destroy a Custom.

Interuser, Is in some Cases, where a Custom may be used in one Sort, and sometimes in another, and yet a good Custom, if there be good Considerations for the Exchanging thereof at Times.

Fine at the Lord's Will If the Lord have used, at the Admission of his Copyhold Tenants, sometimes to take for a Fine Two Pence, or sometimes Four Pence for an Acre, sometimes Twelve Pence an Acre; this *User* is so uncertain, that it makes the Fine arbitrary at the Lord's Will.

Custom

Custom to pay a Fine according to yearly Value, good. *Pract. Reg.* 174.

If the Lord of a Manor have used, *Admission* Time out of Mind, to admit his Co-*without*pyhold Tenants without Fine; this *Fine*. Usage shall bind the Lord, as well as a Fine certain.

If the Lord have used to have cer-*Work of*tain Work-days of his Tenants, and *Tenants*. that hath not been used by the Space of Twenty Years last past; yet that *Non-User* is no Discharge to the Tenants, so that there be any alive that can remember the same.

If the Tenants have used, when they sow their Lands, to pay the *Interuser* Lord Rent-Corn, and when it lieth in Pasture, to pay their Rents in Money, this is a good *Interuser*.

If the Tenants have used to pay *Idem*. their Lord every Fourth Year a double Rent, and every Sixth Year an half Rent, this is a good *Interuser*.

If the Tenants have used to have *Abuser by* Common of Pasture in their Lords *Cattle*. Woods for their Horse-cattle, and they put in their Neat-Cattle, and destroy the Woods, this is an Abuser: But it is but finable, and no Forfeiture of the Common, no more than if they have a Common for a certain

Number of Beasts in the Lord's Soil, and they exceed the Number; this Abuse by the Surcharging is only finable, and no Forfeiture.

Forfeiture. If a Man have a Fair to be used Two Days, and he keeps it Three Days, this Abuse is a Forfeiture.

Customs must be reasonable. Every good Custom is grounded upon good Reason, and that shall be said in Reason a good Custom, that in Reason is a good Law; for Law and Custom be of that Affinity, as both do allow like Reason, and both do forbid like Inconveniencies; and the final Effect of both is, to discuss and to discern every Man's true Right, and to give to every Man that which is his own; for although Custom in some Cases differs from Law, and doth admit Execution of some Acts without some Ceremonies required by the Law; yet the End and Effect of Custom is to maintain the like Reason, and avoid the like Inconveniencies as the Law doth.

For Services. If the Tenants of a Manor will prescribe to hold without paying any Rents or Services for their Copyholds, this is no good Custom: But to prescribe to hold by Fealty for all

Ch. 1. Landlords and Tenants.

31

all manner of Services, is good and reasonable.

If a Lord will prescribe never to hold a Court but when it pleaseth himself, this is not good: But to prescribe never to hold a Court for the Special Good of any one Tenant, except the same Tenant will pay him a Fine for the same; that is good and reasonable.

If a Copyholder surrender his Land to the Use of a Stranger, in Consideration that the same Stranger shall marry his Daughter before such a Day; if the Marriage succeeds not, the Stranger takes no Benefit by the Surrender. But if the Surrender be in Consideration that the Stranger shall pay such a Sum of Money at such a Day; though the Money be not paid, yet the Surrender standeth good. Many Customs there are, which at the Beginning were voluntary; and now, by Continuance, are grown compulsory: *Quæ initio fuerunt voluntatis ex post facto fuerunt necessitatis*; saith the Civil Law: Which also in many Cases doth agree with the Common Law.

Wilful denying of Services is a Forfeiture. *Lit. Rep.* 295.

By Copyholders, &c. And if a Copyholder convert Part of his Land into a Fishery, 'tis a Forfeiture. *Lit. Rep.* 268.

But if Tenant for Life of a Copyhold suffers a Recovery as Tenant in Fee-Simple, this is no Forfeiture. *1 Mod. Rep.* 199. If a Fold-Course is not due of Common Right, but of Custom, and there is Disturbance for it, 'tis no Forfeiture. *Lit. Rep.* 267.

And of all Forfeitures committed by Copyholders, the Lord only is to take Advantage.

Remainder. Also if he in Remainder entreth upon a Tenant for Life of a Copyhold, and makes a Surrender, nothing passeth. *Mod. Rep.* 199.

Admittance. Note, An Admittance of Tenant for Years, is an Admittance of him in Remainder. *1 Vent.* 269. *1 Mod.* 102, 120. *4 Co.* 23. *3 Cro.* 504.

Sole Feeding. Custom for Copyholders to have sole Feeding in a certain Waste, it is not needful to alledge that the Beasts were Levant and Couchant. *Vid. 2 Lev.* 2, 67. where also it's said,

Licence for Commoning Beasts. Copyholders may licence others (without Deed) to put in their Beasts, and may exclude their Lord. *1 Vent.* 165. *2 Saund.* 326, 327. But if a Man claim only Common Appurtenant,

purtenant, or Part of the Herbage, he must not say for his Cattle Levant and Couchant; and *fol. 328.* says, The Licence ought to be by Deed.

Lands do not appear to be Copyhold, by saying, They were held according to Custom, unless it be laid at the Will of the Lord. *Idem, 144.*

In what Cases, and when the Lord shall seize the Copyhold Estate of his Tenant for Felony or Treason, *Forfeiture.*
See 2 Vent. 38. 1 Lev. 263.

A Remainder limited to one for the Life of a Tenant for Life may be good by Way of Remainder, because a Tenant for Life may forfeit by alienating in Fee, and then he in Remainder may enter and enjoy; but this Reason holds not in Copyholds: For if a Tenant for Life of a Copyhold commits a Forfeiture of his Estate, the Lord of the Manor shall take Advantage of the Forfeiture, and not he that had the Remainder or Reversion. *1 Saund. 151.* *Remainders limited.*

Also a Lord may grant Copyhold forfeited before Seizure. *1 Lev. 26.* But *Strode* vers. *Dennison.* *3 Lev. 94.* Copyholder for Life was attainted of Felony, and adjudged, That he in Reversion might take Advantage and enter; for the Estate for Life *Entry by*
Remainder Man.

was determined by the Attainder, altho' it appeared the Felony was pardoned. *See after, Copyholder convicted.*

**Felo de
se.**

No Forfeiture of a *Felo de se* happens before an Inquisition is taken and returned. *Saund. 278, 362.*

Habendum.

The Husband takes Copyhold Lands of the Lord, to whom the Lord grants the Seisin to hold to the Husband and Wife; 'tis a good Grant to the Wife, altho' she is not named till after the *Habendum*. 1 *Saund. 151.*

Seizure.

A Lord without a Custom may seize the Lands until the Tenant comes in to be admitted, but cannot seize them as forfeited without a Custom. 1 *Lev. 63.*

**Surrender
by him in
Remainder.**

If he in Remainder of a Copyhold surrenders his Remainder for the Use of the Tenant for Life, and after his Decease to the Use of himself and his Wife, the Estate limited to the Tenant for Life is void; but ~~the~~ the Estate limited to the Husband and Wife good by Way of a present Estate, but not by Way of a Remainder. 1 *Saund. 150, 151, 152.*

But a Surrender of a Copyhold in Fee, from the Time of his Death, is void. *Idem. 151.*

A Copyholder convicted of Fe-^{Copyholder}lony, had Clergy allowed before ^{convicted.} Attainder; and the Court were of Opinion, That 'twas no Forfeiture without a special Custom. 1 Lev. 263.

If a Covenant or Agreement be ^{Surrender.} to surrender a Copyhold to the Use of A. then a Surrender into the Hands of Two Copyholders, according to the Custom, is sufficient. 1 Lev. 293.

A Copyhold Estate cannot be sur-^{Admitt.}rendred to another by Attorney with-^{tance.}out Deed; but one may be admitted to a Copyhold Estate without Deed. *Pract. Reg.* 170.

Admittance to a particular Estate, ^{No Fine}is Admittance to the Remainder; ^{due.}and no Fine ought to be paid for Admittance to a Remainder without special Custom; and a Refusal to pay a Fine upon a reasonable Doubt of the Custom, is not a Forfeiture. — 3 Lev. 308.

Copyhold Land of the Tenure of ^{Borough.}*Borough-English*, surrendered to the Use ^{English.}of another Person and his Heirs, who dies before Admittance, the Right shall descend to the youngest Son. 1 *Mod. Rep.* 102 3 *Keb.* 263. 4 *Co.* 22. b.

Surrender. If a Copyholder for Life surrenders to the Use of another who is admitted, by this the first Copyholder's Estate is clearly determined; but if Copyholder in Fee surrenders to the Use of another for Life, after his Death he shall have it again. *King and Lord's Case. Hil. 5 Car. 1. B. R. Rot. 793. Cro. 1 Par. 148.*

By an Infant. If an Infant surrender Copyhold Land to another who is admitted, this is not good to bar the Infant, for he may enter at his full Age. *Goole and Grane's Case. Moor's Rep.*

By Husband. If a Woman Copyholder take an Husband who surrenders, this shall be no Discontinuance to the Wife, nor her Heirs. *35 Eliz. Bullock and Dibley's Case. 4 Co. Rep. 23.*

Entry by Heir. The Lord of a Manor seized a Copyhold without Cause, and granted it to another in Fee, the Grantee died, and his Heir was admitted: Then the first Copyholder died, and his Heir entred upon the Heir of the Grantee, and surrendered to the Use of a Stranger; and here the Heir's Entry before Admission was adjudged lawful, and his Surrender to the Use of a Stranger good; and it was resolved, That the Descent of a Copyholder doth not

not toll or take away the Entry of another Copyholder who hath Right. *Cro. 2 Par. 36. and vide Co. 4 Rep. fol. 23.*

If a Copyholder for Life cut down Trees, the Lord may carry them away. *Pract. Reg. 170.*

If a Copyholder commit Waste, whereby a Forfeiture accrueh to the Lord, who afterwards accepteth of Rent; this doth not bar the Lord, but he may enter for the Forfeiture of the Tenant, notwithstanding the Acceptance of the Rent. *M. 29 Eliz. in B. R. Godbolt 47.*

If a Copyholder forfeit his Estate, and then surrenders to the Lord who accepts it, not knowing of the Forfeiture; yet this is no Dispensation of the Forfeiture. *Hill. 4 Car. 1. Rot. 496. B. B. Matthews and Whetton's Case. Cro. 1 Par. 169.*

A Copyholder in Fee took a Lease for Years of a Manor: Resolved the Copyhold was extinct for ever, and not only during the Lease. *Hide and Newport's Case, Moor's Rep.*

If a Feme Copyholder in Fee take an Husband, who makes a Lease for Years contrary to the Custom; after the Husband's Death, this Forfeiture shall not bind the Feme and her

The LAWS concerning Ch. 1.

her Heirs, but she shall have it again after her Husband's Death *non obstante* the Forfeiture; and so it was adjudged *inter Savern and Smith* in the *Exchequer. Cro. Rep. 1 Par. 7. Pasch. 1 Car. 1.*

Copyhold determined A Copyholder in Fee surrendered to the Lord of the Manor his Copyhold Estate, and the Lord made a Lease for Years of the Manor and of the Copyhold, by the Name of his Tenement called *H.* and whether by this the Copyhold was determined or no, was the Question: And it was held that it was not; because when the Lord let the Manor, it was included as Parcel thereof; but if he had made a Lease for Years of the Copyhold by it self, that had destroyed the Copyhold, for it was then during that Time severed from the Manor, and so could never again be demisable by Copy. *M. 14 Car. 1. in B. R. Lee and Boothley's Case. Cro. 1 Par. fol. 375.*

Estate forfeited revived.

If a Copyholder make a Lease for Years, which is a Forfeiture at the Common Law, and after the Lord makes a Feoffment, or a Lease for Years of the Freehold of this Copyhold, in this Case the Feoffee or Lessee of the Lord shall not take

Ad-

Advantage of the Forfeiture; for the Lease of the Freehold made by the Lord before Entry, is an Assent that the Lessee of the Copyholder shall continue his Estate, and so it is in Nature of an Affirmance and Confirmation of the Lease. *M. 20 El. in C.B. Penn and Mericall's Case. Owen's Rep. fo. 63.*

Every one who hath a lawful Estate or Interest in a Manor, be it in Fee-Simple, Fee-Tail, Dower, Tenant by the Courtesie, Tenant for Life, Tenant for Years, Guardian, Tenant by Statute-Merchant, Staple or *Elegit*, Tenant at Will and Sufferance; if a Copyhold escheat or come into their Hands during the Time, they may regrant it, and it shall bind the Lord, because every one of them is *Dominus pro tempore*. *Co. on Lit. 58. Co. 4 Rep. 28, 29.*

If a Copyholder accept of a Lease for Years of his Copyhold, by this his Copyhold Estate is determined. *29 Eliz. Lane's Case. Co. 2 Rep. 16.*

If the Fine of Copyholders of a Reasonable Manor upon Admittance be incer-
tain, yet the Lord cannot demand or exact unreasonable or excessive Fines; and if he do, the Copyholder may by the Law deny to pay them, and

and it is no Forfeiture ; and it shall be determined before the Judges upon Proof of the Value of the Land, what Fine was reasonable to be demanded ; for if it should be otherwise, great Part of the Copyhold should be destroyed at the Will of the Lord, by exacting unreasonable Fines. Co. 4 Rep. 27. *Latch's Rep. f. 14. acc.*

*Reasonable
Time to
pay it.*

If the Lord assess a reasonable Fine, and require the Copyholder to pay it, he is not bound to pay it presently, because he could not know what the Lord would assess, & *nemo tenetur divinare*, and he shall therefore have reasonable Time to pay it in, if the Lord limits no Time ; but it is otherwise of a Fine certain. Co. 4 Rep. f. 27.

*Not till
Admittance.*

Note, That no Fine is due to the Lord, either upon Surrender or Descent, until Admittance, for that is the Cause of the Fine ; and if after the Tenant deny to pay it (if it be a reasonable Fine) it is a Forfeiture of the Copyhold. *Bacon* and *Flatman's Case*, and *Sand's Case*, so resolved. *Vid. Co. 4 Rep. f. 28.*

*Deserting
of Services.*

If a Copyholder come not to do his Services, although he were often demanded to do them, but still puts off from Time to Time to do them,

them, although he do not absolutely refuse, yet his deferring is a Forfeiture. *Pasch. 2 Car. 1. in B.R. Johnson's Case, Latch's Rep. f. 14.*

The Lord of a Manor assessed *What Fine.* Two Years and half Value of the Land, according to the racked Rent, for a Fine upon the Grant of a Copyhold, and for Non-Payment thereof entred for a Forfeiture: And it was held by the Court of King's Bench, that the Fine was unreasonable, and that one Year and an half of improved Rent was high enough; and therefore the Lord's Entry for the Forfeiture was adjudged unlawful. *Hill. 5 Car. 1. in B.R. Dowe and Golding's Case, Cro. 1 Par. 142. L. L. ibid.*

The Lord assessed a Fine of twelve *Fine cer. tain ten- dred.* Pounds to be paid by a Copyholder, and appoints it to be paid at his Capital Messuage of the Manor Three Months after, and the Copyholder pretending the Fine to be certain (that is to say, Two Years Quit-Rent), offered the same at the Day of assessing the other Fine; but at the appointed Place for the Payment thereof, cometh not thither to excuse his Non-Payment, nor make any other Refusal; and it was held to

to be a Forfeiture of his Copyhold: But if he had come at the Day assigned him for the Payment, and had then tendred the two Years Quit-Rent, being the Fine certain according to Custom, though not assesse'd nor demanded by the Lord, it had not been a Forfeiture. 2 Cro. 617.

Latch's Rep. 122.

Statute of Limitation. It was adjudged, that Copyhold-Lands were within the Statute of 21 Jac. 1. c. 16. for Limitation of Entries within 20 Years. *Pract. Reg.* 170. But see the late Act 4 & 5 Anna, to commence an Action within a Year upon such Entry or Claim. But that Copyhold is not within the Statute of 12 Car. 2. touching Guardians, *Idem* 171. *vide* 3 Lev. 395. 2 Lut. Ent. 1139, 1140.

Tenants by the Verge,

Are after the same Nature as Tenants by Copy of Court-Roll; but they are so called, for that when they will surrender their Tenements into the Lord's Hands, unto the Use of another, they have a little Rod, which, by Custom of the Manor, they deliver unto the Steward or Bailiff, and he which takes the Lands, receives

ceives the Rod in Court from the Steward in the Name of *Seisin*, and therefore they are called Tenants by the *Verge*: Yet they have no other Evidence but Copy of the Court-Roll. *Lit. Ten. Lib. 1. cap. 10.*

One had cut down Timber upon a Copyhold Tenement, which was presented at a Court-Boron, and found to be Waste, and consequently a Forfeiture; whereupon the Defendant was admitted, brought his Ejectment, and had a Verdict. The Plaintiff brought his Bill in Epuity to be reliev'd: And it being not prov'd that the Plaintiff had sold any of the Timber, and that the Premisses was much out of Repair, an Issue was directed to try if the Waste was wilful; which being found for the Plaintiff, it was decreed he should be reliev'd: And that the Defendant should deliver her the Possession again, and account for the mesne Profits: But the Lord Chancellor said, In case it had appeared wilful Waste, she should have not been reliev'd. *Mary Thomas, Widow, v. Potter & al'. Hill. 19 Car. 2. Chancery Cases, 1 par. fo. 98.*

*Copyhold-
er commits
wilful
Waste, and
incurs a
Forfeiture,
the Chan-
cery will
not relieve
him.*

*An Agree-
ment before
Marriage,
to settle
Copyhold on
his intend-
ed Wife,
decreed to
stand good
against a
Purchaser.*

Copyholder before Marriage agreed to settle his Copyhold Tenement on his intended Wife; the Marriage took Effect, and the Husband surrendered the said Copyhold to a Stranger for a Sum of Money by way of Mortgage; he afterwards surrendered the Premises to the Use of his Wife for Life, which Surrender was not presented at the next Court: But the Widow however procur'd her self to be admitted; and it was decreed by the Court of Chancery, That the Wife being in, pursuant to a Marriage-Agreement, her Estate should not be impeach'd; but had it been a meer voluntary Settlement, it would have been otherwise. *Merlin v. Secmore in Canc. Trin. 22 Car. 2. Chancery Cases, 1 Part p. 170.*

A Copyholder having agreed for a valuable Consideration to surrender his Land, is but in the Nature of a Trustee for the Vendee. *ibid. p. 171.*

*No Fine due
from a Re-
versioner
on his Ad-
mittance.*

Where a Copyholder in Fee surrenders to the Use of another for Life, and the Lessee dies, he shall not pay a Fine for a Re-admittance to the Reversion; for it continued always

ways in him. 9. Co. Mary Podger's Case. 107.

And if such Copyholder in Fee ^{But one} surrenders to the Use of One for ^{Fine due} Life, Remainder to a Third Person ^{from Te-} in Fee, but one Fine is due; for the ^{nant for} particular Estates and the Remain- ^{Life, and} ders are but one Estate. ^{those in Re-} Mich. 38. ^{mainder.} & 39 Eliz. B. R. by Poplar.

If a Copyholder incur a Forfeiture ^{Lord after} by committing Waste, and the Lord ^{acceptance} afterwards accept the Rent, he ^{of Rent,} may enter for the Forfeiture not- ^{may enter} withstanding; for the Copyhold ^{for Waste} was in him immediately by the For- ^{committed} feiture. ^{before that} Mich. 29 Eliz. B. R. Godb. ^{Time.}

47.

Tenants in Coparcenary.

There be Two Kinds of Tenants in Coparcenary; that is, Parceners at the Common Law, and Parceners by Custom.

After the Course of the Common Law, when a Man or Woman is seised in Lands or Tenements in Fee-Simple, or Fee-Tail, and hath no other Issue but Daughters, and dieth; the Tenements descend to the Daughters equally as Coheirs, and

and they shall enjoy every one an equal Part thereof as Tenants in Partnership, and are all as it were one Heir to their Ancestor: And these Coheirs or *Parceners* may have a Writ, called, *Breve de Partitione facienda*, to have the Lands equally divided and shared amongst them.

Sisters.

If a Man seised of Lands die without Issue, and the Tenements descend to his *Sisters*; or if he hath no *Sisters*, and it descends to his Aunts: They be *Coheirs* or *Parceners* as aforesaid.

Aunts.

*Tenant by
Courtesie.*

If there be Two *Parceners*, One marries and hath Issue and dieth, and afterwards her Husband holdeth one Half, as Tenant by the Courtesie; the Coheir or *Parcener* that surviveth, and the Tenant by the Courtesie may make Partition between them: And if the Tenant by the Courtesie will not consent thereunto, the surviving *Parcener* may compel him by a Writ *de Partitione facienda*.

But if the Tenant by the Courtesie desires to have Partition, and the *Parcener* surviving will not agree to it; the Tenant by the Courtesie can have no Remedy: For he cannot

have a Writ *de Partitione facienda* against the surviving Parcener, although the Parcener may have it against him. See the late Acts concerning *Partition*.

Parceners by Custom.

This Tenure is Gavelkind, and *Parceners* is only used in *Kent*, except in some *by Custom.* certain Places in *England* besides, and *Gavelkind.* in *North-Wales*. But the Men of *Kent* only claim this as a Right remaining unto them unconquered; and it is thus: If a Man be seised in Fee-Simple or Fee-Tail in Lands or Tenements of the Custom and Tenure of Gavelkind, and hath Issue divers Sons, and dieth; all the Sons shall be *Cokeirs*, and equally inherit those Lands and Tenements as Females do, and may make Partition by Writ *de Partitione facienda*, and divide, as in the Case of Daughters at the Common Law.

Grant of *Borough-English* Lands to one and his Heirs for Three Lives, the Youngest Son shall be Heir. 2 *Lev.* 138.

Otherwise in Gavelkind, of Rent granted out of it, it should go amongst

mongst all as the Land should.
Idem 89.

A Rent *de novo*, granted out of Gavelkind Land, shall descend according to the Descent of the Land.
 1 *Mod. Rep.* 36, 96.

Joint-Tenants.

Joint-Tenants.

When a Man being seised of certain Lands and Tenements, doth thereof enfeof Three or Four, or more, to have and to hold to them and their Heirs, or to hold to themselves for the Term of their Lives, or for another's Life, and they become seised by Virtue of that Feoffment: These are said to be Joint-Tenants.

Disseisors.

Likewise, if Two or more disseise another of any Lands or Tenements to their own Use, the Disseisors be Joint-Tenants; but if it be but to the Use of one of them, they be not Joint-Tenants.

Now, the Nature of Joint-Tenants is, That the whole Estate shall go to the Survivor.

As if there be Three Joint-Tenants in Fee-Simple, and the one of them hath Issue, and dieth, the Two that survive

survive shall have the whole Tenements, and nothing thereof shall go to the Issue of him that is dead: And if the second Tenant have Issue and die, the Third who is the Survivor *Survivor.* shall enjoy the whole, and shall have it in Fee-Simple to him and his Heirs.

But now there is a Difference in Tenants in Parcenary: For if there be three *Copartners*, and one hath Issue, and dieth before there be any Partition made, that Part which belonged to her that is deceased, shall descend to her Issue: And if such a Parcener die without Issue, her Part shall descend to her *Cohairs*: So that this they have by Descent, and not by Survivorship, as Joint-Tenants have. *Aliter, if Copartners.*

And as the Survivorship taketh *Survivorship.* Place among Joint-Tenants, so it doth amongst all Persons who have Joint-Estate, or Possession with others in Chattels Real or Personal.

As, if a Lease be made to several *Upon a Lease.* Persons for Term of Years, the Survivor of the Lessees shall enjoy all the Tenements during the Term by Vertue of the Lease.

D

And

Of Goods,
&c.

And in like manner, Goods and Chattles Personal, whereof there be Partners, shall go to the Survivor. And if a Bond be made to many Persons for one Debt, and some of the Obligees die, the Survivor shall have all the Debt. And so it is in all Covenants and Contracts amongst Partners.

There may also be Joint-Tenants for Term of Life, and yet they have several Inheritances: As,

Several In-
heritances.

If Lands be given to Two Men to hold to them for Term of their Lives, and to the Heirs of their two Bodies, here these *Donees* are Joint-Tenants for Term of their Lives, and have several Inheritances: For if one of them have Issue and die, the Survivor shall enjoy the whole during his Life by Survivorship. And if the Survivor have also Issue and die, then the Issue of them both shall enjoy the Estate equally between them, as Joint-Tenants.

Now the Reason why these are said to have several Inheritances, is, because it is impossible for them to have an Heir between them, as a Man and a Woman may have.

Distinction

Therefore the Law maketh this Distinction according to Reason and the

the Form of the Gift ; that is to the Heirs that one getteth on the Body of his Wife ; and so likewise of the other : So that by this Reason it must of necessity be, that they have several Inheritances.

And if after the Death of the ~~Do~~^{One} ~~Donee~~^{Donee} ~~neer~~, the Issue of one of the ~~Donees~~^{dying}. die also, leaving no Issue of his Body surviving, in this Case, the ~~Donor~~ or his Heirs may enter into the Moie-
query & see
 ty of the Lands, as in his Reversion, though the other of the ~~Donees~~ hath Issue living.

In like Manner, if Lands be given *Simile be-* to Two Females and to the Heirs of *tween Fe-* one of them ; in this Case, the one *males.* of them, that is, she that hath it but for Life, hath a Freehold ; and the other hath a Fee-Simple : And if she that hath the Fee die, the other who hath the Freehold, shall enjoy the whole during her Life, by Vertue of her Survivorship.

And if Tenements be given to Two, and to the Heirs to be ingendred of the Body of one of them ; here the one hath Freehold, and the other Fee-Tail.

If there be two Joint-Tenants, and *One grants* they be seised of an Estate in Fee-*a Rent-* Simple, and the one by Deed grants *charge to* *the other.*

a Rent-charge to another out of that Part which appertains to him ; now, during the Life of the Grantor, this Rent-charge is good and effectual, but it becomes void after the Death of the Grantor : For the Tenant that surviveth, shall hold all the Land by Survivorship, discharged from the Rent-charge of the other.

If there be Two Joint-Tenants for Life, and one lets his Part for Years, rendring Rent, and dies, the Term shall continue against the Survivor, but the Rent is gone. *Finch, Lib. 1: cap. 3. p. 13. Dyer 187.*

*Difference
between
Cokeirs
and Co-
partners.*

But amongst *Cokeirs* or Parceners, it is otherwise : For if there be Two Parceners in Tenements in Fee Simple, and before Partition one chargeth his Part by his Deed with a Rent-charge, and dieth leaving no Issue, whereby his Moiety descends to the other Partner ; here that Part shall not be freed of the Rent-charge, because he cometh to this Moiety by Discent as Heir by Law.

*Partition
by Consent.*

If Joint-Tenants be desirous to make Partition between rhem, they may do it by Consent and Agreement amongst themselves ; and such Partition is good and binding against each other : But unless it be done by

by mutual Consent amongst themselves, the Law cannot enforce or compel them, or either of them, to do it; because Joint-Tenants cannot have a Writ *de Partitione facienda*, as Tenants in Copartnership may have. But see the late Stat. *post.* 58.

If there be a Joint-Estate of Lands and Tenements made to a Man and his Wife, and to a third Person; here the third Person shall have as much as the Man and his Wife; that is, one Moiety: For the Man and Wife can have but half the Estate, because they are but one Person in Law. *Hand and Wife are but one.*

In like manner it is if Lands were made to a Man and his Wife, and to Two others; here the Man and Wife can have but a Third Part, and the Two others the other Two Parts.

Tenants in Common.

Such as have Lands and Tenements by several Titles, and not joint Title, and none of them knoweth what is several to him, whether it be in Fee-Simple, Fee-Tail, or for Term of Life; these are said to be Tenants in Common, because they

ought by the Law to hold, enjoy and occupy the Lands and Tenements in Common and undivided, and to take the Profits in Common, as coming to the same Lands and Tenements by several Titles, and not by one joint Title.

Joint-Tenants become Tenants in Common.

If a Man enfeoff two Joint-Tenants in Fee, and one of them *aliens* his Part to another in Fee; this *Alienee* and the other Joint-Tenant, be Tenants in Common, because they now stand seised by several Titles; the one Joint-Tenant by Vertue of the first Feoffment made to him; and the other Joint-Tenant and the *Alienee* become seised in their *Moiety* by Vertue of the Feoffment of the other Joint-Tenant; so that the several Feoffments make their Titles several, whereby they become Tenants in Common.

Simile.

If there be three Joint-Tenants, and one of them *aliens* his Part to another Person in Fee, here the *Alienee* is Tenant in Common with the other two Joint-Tenants, and of the other two Parts, the two Joint-Tenants be seised jointly, and the Survivor of them shall have the whole of those two Parts by Vertue of Survivorship.

If

If there be two Joint-Tenants in *Simile*. Fee, and one of them gives his Part to another in Tail, here the *Donee* and the other Joint-Tenant become Tenants in Common.

Also if Lands be given to two *Simile*. Men, and to the Heirs of their two Bodies; in this Case, those *Donees* have a joint Estate during their Lives; and if both of them have Issue and die, both their Issues shall hold the Land as Tenants in Common.

If Lands be given to two Men and their Heirs, to hold to each a Moiety, these are Tenants in Common.

If a Man, being seised in certain *Between* Lands, doth enfeoff another in the *Feoffor and* Half of it, without limiting of the *Feoffee*. same Half in Severalty at the Time of the Feoffment made; that is, do not distinguish that Half from the other by particular Bounds and Limits; in this Case the *Feoffor* and the *Feoffee* shall hold their Parts of those Lands in Common.

And as it is amongst Tenants in *Difference* Common in Lands or Tenements in *between* Fee-Simple or Fee-Tail, in the same *Tenants for* Nature it also is between Tenants for *Life and in* Term of Life: As if there be two *Common*.

Joint-Tenants seised in Fee, and one of them lets to a Man his Part for Term of his Life, and the other Joint-Tenant lets to another Man his Part for Term of Life ; these two Lessees be Tenants in Common for the Term of their Lives.

One grants away. Likewise if a Man lets Lands unto two Persons for the Term of their Lives, and the one of them grants all his Estate of the Part belonging unto him unto a third Person ; then this third Person to whom this Grant is made, and the other Tenant for Term of Life, be both Tenants in Common during the Lives of both the Lessees.

One releases. If there be three Joint-Tenants, and one of them releaseth all his Right which he hath in the Land by his Deed to one of his Fellows, then he to whom the Release is made, hath the third Part of the Lands by Ver- tue of that Release, and shall hold that third Part with himself and his Fellow in Common, and they two shall hold the other two Parts jointly.

Simile to the Husband. Also if a joint Estate be made unto a Man and his Wife, and to a third Person, and that third Person, releaseth his Right which he hath in that

that Estate to the Husband; then the Husband hath the third Person's Moiety, and the Wife hath nothing therein at all.

And if such third Person release ^{Similar to the Wife.} his Right in his Moiety to the Wife, not naming her Husband in the Release; then the Wife hath the third Person's Moiety, and the Husband hath nothing at all in it, but only *Jure Uxoris*, in the Right of his Wife; because the Release shall work to invest the Estate in the Person to whom the Release is made, of all that appertained to him that made such Release.

There may be also Tenants in ^{Tenants in Common by Prescription.} Common by Title of Prescription; that is, when two have holden Lands in Common undivided; the one, one Half from his Ancestors, and the other, the other Half from his Ancestors, or from whom the Estate is derived unto them undivided, Time whereof the Memory of Man hath not known the contrary: These are Tenants in Common, by Title of Prescription.

Now these Tenants in Common ^{What Actions ought in some Cases to have for the Maintenance of their Possession several Actions; and in some Cases they} ^{ought by them, &c.}

shall all join in one Action : For if there be two Tenants in Common, and they be disseised, they two cannot bring against the Disseisor one Assize in both their Names, but they must have against him two Assizes : For every of them ought to have an Assize of his Half, because the Tenants in Common are seised by several Titles.

But amongst Joint-Tenants it is otherwise ; for if there be never so many of them, and they be disseised, they shall have but one Assize in all their Names, because they have all but one joint Title.

It hath been formerly held, that an Action on the Case lay not for one Tenant in Common, &c. against another who disposes of the whole, 1 Lev. 29, &c.

Stat. 4 & 5 But by the late Act, for Amend-
An. ca. 16. ment of the Law, 4 & 5 Annæ, it is enacted, *That Actions of Account may be brought and maintained against the Executors and Administrators of every Guardian, Bailiff or Receiver, and also by one Joint-Tenant, and Tenant in Common, his Executors and Administrators, against the other as Bailiff, for receiving more than comes to his just Share or Proportion, and against the Executor*
and

and Administrator of such Joint-Tenant, or Tenant in Common.

There is likewise a Difference in ^{Tenants by} suing real Actions between Partners ^{divers Des-} that be in divers Descents, and Tenants in Common. For if a Man who is seised of Lands in Fee dieth, leaving only two Daughters his Co-heirs, and these two Daughters enter, and have each of them a Son, and die without making any Partition between them, so that the Lands descend equally to their two Sons, the one Moiety to one of them, and the other to the other, and they enter and enjoy the same in Common, and be disseised; they shall not in this Case bring two Assizes, but one Assize in both their Names: For though they came in by divers Descents, yet they be Parceners, and a Writ *de Partitione* ^{Partition.} *facienda* lieth between them. Nevertheless they be not Parceners by reason of the Seisin and Possession which they have from their Mothers, but in respect to their Estates which descended to their Mothers from their Grandfathers.

And so in Respect and Considera-^{Parceners.} tion of their first Descent that was to their Mothers, they have a Title in
Par-

Parcenary which maketh them Parceners; and they be but as one Heir to their Common *Ancestor*, their Grandfather, from whom the Land descended to their Mothers. And therefore, before Partition made between them, they should have but one Affize, though they came in by several Descents.

*Personal
Actions.*

And likewise in Personal Actions, in Trespass, and such like Cases which concern their Tenements in Common, the Tenants in Common ought to bring such Personal Actions jointly in all their Names; as for breaking their Houses, Closes or Pastures; wasting, treading down, or otherwise spoiling the Grass; cutting or selling of their Woods; spoiling their Fruit-Trees, fishing in their Ponds, and such like. In these and all such kind of Actions wherein they are jointly concerned, the Tenants in Common shall have one joint Action, and recover Damages jointly.

*Lease by
them.*

Likewise if two Tenants in Common make a Lease of their two Tenements to another for Term of Years, reserving unto themselves a certain yearly Rent, if the Rent be in Arrear, they shall have one Action of

of Debt for the Rent against the Lessee in both their Names, and not divers Actions.

If two Persons or more have Chattels Real or Personal in Common and by divers Titles, if one of them die, the other who survives shall not have his Part that is dead in those Chattels by Survivorship, but the Executors of him that dieth shall hold and enjoy his Part with them that survive, as the Testator did or ought to have done in his Life-time.

If two Persons have an Estate in Common for Term of Years, and one of them puts the other out of his Possession, and enjoys all himself; then he that is so put out of Possession, may bring his Ejectment against the other for his Moiety.

But if two Persons be possessed of Chattels Personal in Common by divers Titles, as of an Horse, or an Ox, or a Cow, or the like, and one of them takes it into his own Possession from the other; now the other hath no Remedy, but to take this from him that hath done him the Injury, again, to occupy in Common, when he hath an Opportunity; that is, in plain Terms, he may come by it as well as he can.

There

Other Tenants.

There are also Tenants in Ancient Demefn.

Of whose Tenures and Privileges you may read at large in Mr. *D'Anver's* General Abridgment, 657, &c. *Tit. Ancient Demrfn.*

There are also feveral other Tenants befides the afore-mentioned, as Tenant by *Elegit*, Tenant by Statute-Merchant, Tenant by Statute-Staple, Tenant in *Mortgage*, &c.

Some Observations as to Mortgages.

That where Lands are mortgaged thrice over, the third Mortgagee may buy in the firft Incumbrance to protect his own Mortgage, and he hath both Law and Equity for him. *2 Ven. 338.*

That he fhall hold the Land againft the fecond Mortgagee until he be fatisfied both the Money he paid the firft Mortgagee, and alfo his own which he lent upon the laft Mortgage. *Ibid.*

But where only Part of the Lands are mortgaged to the Firft, and the whole to the Second, and after to the Third; if the Third buys in the firft Title, it fhall protect only that Part that is in the firft Mortgage. *Id. 339.* That

That a Purchaser or Mortgagee coming in upon a valuable Consideration without Notice, and purchasing a precedent Incumbrance, it shall protect his Estate, though he purchased in the Incumbrance after Notice of a second Mortgage. *Ibid.*

That Mortgages are not relievable *Relief.* in *Chancery* after 20 Years, for the *Statute* of 21 *Jac.* 1. c. 16. limits the Time of Entry to that Number of Years, &c. *Idem* 340.

That upon a Mortgage in Fee the Redemption-Money shall be paid to the Executor, and not to the Heir. *Id.* 338, 351.

That the Court of *Chancery* cannot shorten the Time that is given by express Covenant and Agreement of the Parties, but when that Time is past, then the Practice is to foreclose. *Id.* 365.

But *note*, The Practice of *Chancery* is now otherwise: For though there be an express Covenant in the Mortgage-Deed, if the Money be not repaid at the Day, the Mortgagor shall be absolutely foreclosed, &c. yet if it appear that the Money lent is not an equitable Consideration, the Court will not only enlarge the Time for Repayment, but
order

order the Mortgagee to reconvey the Estate on Payment of Principal, Interest and Costs, within six, nine, or perhaps twelve Months after the Time limited in the Deed.

Also, though the Covenant or Agreement be, That if the Money be not repaid at the Day, then on Payment of a further Sum in certain, the Mortgage to be absolute; or though more Money be lent to the Mortgagor after the Mortgage, or even after the Forfeiture, yet if there appear to be no Hardship on the Mortgagee, or that the Money so lent is not a sufficient equitable Consideration for the Estate, the *Chancery* will compel the Mortgagee to reconvey on Payment of Principal, Interest, Costs and Damages.

Stat. 4 & 5 W. & M. cap. 16.

5. W. & M. cap. 16. If a Man mortgages his Lands or Estate twice, and does not declare or give Notice to the second Mortgagee of the former Mortgage, or within six Months clear it, he loses the Equity of Redemption to the second Mortgagee, and he himself will stand foreclosed.

And *note*, the Judges at Common Law may and ought judicially to take notice of Mortgages and Equi-

Equities of Redemption, and therein guide themselves by Rules of Equity, rather than by the strict Rules of Law; for nothing has more contributed to the exorbitant Power of *Chancery*, than their Over-fondness for what they call Maxims of Law.

C H A P.

C H A P. II.

Of Leases, Covenants and Conditions; Proviso's and Reservations, Surrenders and Assignments of Leases.

Leases and Covenants. **I**N all Leases, as we have said before in the Title of *Tenant for Term of Years*, there must be Lessor and Lessee: He which demises or lets Land to Farm, is the Lessor; and he who takes the Land, that is, unto whom it is so let or demised, is called the Lessee; in more vulgar Terms understood by the Title of *Landlord and Tenant*.

Landlord and Tenant. According to our general and common Acceptation now-adays every Lessee for Life, Years, or at Will, though it be but of a Cottage, or never so small a Tenement or House, is called a *Firmor* or *Farmer*, and the Premises a *Firm* or *Farm*; so we say in the Writ, *A Firma sua ejecit*; which may be the Reason they are called Farms.

But anciently the chief Messuage in a Parish or Country Town was called, by Way of Pre-eminency, a Farm;

Farm; and unto this Farm belonged great *Demefns* of all Sorts, as Gardens, Meadows, Pastures, Rivers, Woods, Moors, Waters, Marishes, Furzes, Heath, and also Messuages, Houses, Tofts, Mills, and the like: And all these are comprehended under the Title of Lands. These *De-Demefns* were used to be let out to others for Term of Life, Years, or at Will. Of Leases by Parol or Word of Mouth, &c. *vide ante* pa. 16, 17.

These ancient Farms, (or Firms, which you will call them; which Appellation or Dialect differs according to the County: In *Essex*, *Norfolk* and *Suffolk*, they call them Firms and Firmors; but in the West, are called Farms and Farmers:) These Farms, I say, attained to this Title from the old Saxon Word *Feor-mion*, which signifies to feed, provide or yield Victuals; so that a Farmer signifies a Victualler; for anciently the Landlords did not receive Money upon their Leases for their Rent, but Corn and Victuals, being such as the Farm yielded of its Growth; until it came by Degrees into Part Money and Part Victuals; and at last, about the Time of King *Henry the First*, the Rent reserved

The Name and Nature is now altered.

served was turned into Money, and so hath hitherto continued amongst most Men.

*Ancient
Rents.*

Yet amongst some, where the ancient Rents or Reservations are not altered, the Rent is in Corn or Viduals to this Day, especially in Colledge and Church-Leases; and doubtless, many of those ancient Reservations received their utmost Period in the general Dissolution of the Religious Houses, to the no small Detriment of the industrious Farmer. *Co. 7. Par. f. 13.*

*What
Rents.*

All Leases for Years reserving Rent, must be made of Lands and Tenements, whereunto the Lessor may come to distrain; so that a Rent cannot be reserved by a Common Person out of any incorporeal Inheritance, as Advowsons, Commons, Offices, Tithes, Fairs, Markets, Liberties, Franchises, and the like: But if a Lease be made by Deed in Writing of one of them, one may have an Action of Debt by way of Contract, but one cannot distrain: But if any Rent be reserved in such Cases upon a Lease for Life, it is utterly void. *Co. 1 Par. Inst. p. 47. Co. 7. 23.*

A Te-

Ch. 2. Landlords and Tenants. 69

A Tenant for Life leased for ^{Rent by} Years, the Lessee assigns to him by ^{way of} Parol, without Deed, rendring Rent : ^{Contract.}

It was said by the Chief Justice, That although this Assignment by Operation of the Law turn'd to a Surrender, yet it was not an express Surrender ; and if the Rent was not good by way of Reservation, it was good by way of Contract ; and so Judgment was given for the Plaintiff, although all the Days were not pass'd. 2 Lev. 80.

Note, that every Quarter's Rent ^{Every} is a several Debt, and distinct A-^{Quarter's} ctions may be brought for each ^{Rent.} Quarter's Rent. 1 Ventr. 129.

Also a Debt for Rent is payable ^{Payable by} by an Executor before Bonds, be-^{Executor.} cause it favours of the Realty, and is maintained in regard of the Profits of the Land received. *Id.* 184.

Action of Debt lies for the Lessor against an Assignee of a Moiety of the Land, for the Moiety of Rent. 2 Lev. 231.

Leases for Term of Years are Chattels ; so that if a Man have a Lease of Lands for five hundred Years, it is a Chattel, and goes to his Executor or Administrator, if he dis-

dispose not otherwise of it before his Death. 32 ot 23 *Lib. Ass.* 6.

*Long
Leases.*

That a Lease for Years, although it be a very long Lease, cannot be entailed; (but may be assign'd in Trust to several Uses, which may be an Entail in Effect.) For the Nature of a Chattel cannot be turned into an Inheritance. *Pract. Reg.* 400. *Idem* 401.

That if a Lease for Years comes to be limited in Tail, the Law allows not a present Remainder to be limited thereupon; yet it will allow a future Estate arising upon a Contingency only; and that to wear out in a short Time. By the Lord Chancellor *Finch*, in the Duke of *Norfolk's Case*, *fo.* 27.

Every Man who is seised of Lands in Fee-Simple, may lease out his Lands for what Time or Term he pleaseth himself: And so likewise might Bishops have done formerly, before the Statutes restrained them. 32 *H. 8. c.* 28. 13 *El. c.* 10. 18 *El. c.* 6.

*By Tenant
in Tail.*

A Tenant in Tail being at Age, may by Deed in Writing lease out such Lands as have been let to Farm Twenty Years next before the Lease made,

made, reserving the old Rent or more: The Words [*without Impeachment of Waste*] must be omitted in it, and it must commence from the Day of the Making or Date. And if there be an old Lease in being, it must be surrendered, expired or ended within one Year after the making of the new one, or else it is void. And a Lease thus made, binds the *Issue bound*. Issue of the Tenant in Tail if he die before the Term be out: But if the Tenant in Tail die without Issue, the Donor may avoid the Lease by his Entry, and so may he in Remainder; and though he accept the Rent, yet he doth not thereby confirm the Lease. *Vide 1 Jac. c. 3. Hern's Con. 62, 67, &c.*

A Man that is seised of Lands in *Of his* Fee-Simple or Fee-Tail in the Right *Wife's* of his Wife, may make a Lease by *Land*. Indenture in Writing of his Wife's Land, in the Name of himself and his Wife, and she to seal thereunto, reserving the Rent to himself and his Wife, and to the Heirs of his Wife; this Lease shall be good against the Woman and her Heirs after her Death.

Bishops, Deans and Chapters, ob- *By Bishops,* serving the Rules, may make Lea- &c.

ses

ses of such Estates as they are seised of in Fee, in Right of their Churches: And so may Masters, Provosts, and Fellows of Colleges, and Wardens of Hospitals, if they be not prohibited by the private Statutes of their Foundations. *Vide* 32 H. 8. cap. 28, &c. as follows:

LEASES by Statute-Law.

*By Tenant
in Tail,
&c.*

I. Stat. 32 H. 8. 28. Leases made by Tenant in Tail, or by him who is seised in the Right of his Wife or Church (they being of full Age at the Time of such Lease made) shall be good and effectual in the Law against the Lessors, their Wives, Heirs and Successors.

*To what
Leases it
shall not
extend.*

II. The Statute shall not extend to any Lease to be made of Lands, in the Hands of any Farmer by Force of any old Lease, unless such old Lease expired within a Year after the making of the New; nor to any Grant to be made of any Reversion of Manors, Lands, &c. nor to any Lease of such Manor, Lands, &c. which have not been let to farm, or occupied by Farmers, twenty Years before such Lease made; not to any Lease to be made with-

without Impeachment of Waste, nor any Lease to be made for above twenty-one Years, or three Lives, from the Day of the making thereof; and that upon every such Lease, there be reserved so much yearly Rent, as hath been usually paid for the Lands so let, within twenty Years next before such Lease made; and the Reversioners of the Manors, Lands, &c. so let (after the Death of such Lessor or his Heirs) may have such Remedy against such Lessee, his Executor and Assigns, as such Lessor might have had against such Lessee.

III. Provided, That all Leases *Leases by Husband of the Wife's Lands.* made by the Husband, of Manors, Lands, &c. (being the Inheritance of the Wife) shall be made by Indenture, in the Name of the Husband and Wife, and she to seal to the same, and the Rent shall be reserved to the Husband and Wife, and the Heirs of the Wife: And here the Husband shall not alien or discharge the Rent or any Part thereof, longer than during the Coverture, unless it be by Fine levied by Husband and Wife.

IV. This Act shall not extend to Farms. give Liberty to take more Farms or

E

Leases

Leases, than might have been taken before this Act, (*vide Stat. 25. H. 8. c. 13.* That none shall hold above two Farms together) nor to any Parson or Vicar to make any Lease otherwise than they might have done before.

Leases reserved.

V. All Leases for Years made within three Years before the 12th of *April*, in 31 *H. 8.* by Writing indented, under Seal of any Person or Persons of full Age, *sane Memory*, not unlawfully coerced nor Covert Baron, of any Manors, Lands, &c. wherein he or they have an Estate of Inheritance to his or their own Use at the Time of the making thereof, and whereof the Lessee or Lessees, or their Assigns, have now the Possession by Force of such Lease or Leases, and no Cause of Re-entry or Forfeiture thereof had or made, shall be good in Law against such Lessors, their Heirs and Successors; so as so much yearly Rent be reserved for the same, as was paid for the same within 20 Years next before the Making of such Lease or Leases; or else such Lease or Leases to be of no other Force than they were before the making of this Act.

VI. No Fine, Feoffment, or other *Fine, &c.* Act done by the Husband only, of *by Husband* the Inheritance of Freehold of the *band.* Wife, shall make any Discontinuance, or prejudice the Wife, or any other who is to enjoy it after her Decease; the Fines levied by the Husband and Wife only excepted.

VII. This Act shall not give Li- *Husband* berty to the Wife and her Heirs to *and Wife.* avoid any Lease hereafter to be made of the Wife's Inheritance, by the Husband and Wife for one and twenty Years and under, or three Lives; whereupon the accustomed yearly Rent for twenty Years before is reserved, according to the Tenor of this Act.

VIII. This Act shall not extend to make good any Lease, made by any Ecclesiastical Person, which is made void by Authority of Parliament, or by any such Person or other now attainted of Treason.

IX. *Stat. 1 Eliz. not printed. (Vide Estates by* Abr. of Stat. Tit. Leases, p. 401.) All *Bishops.* Estates made by an Archbishop or other Bishop, of any Manors, Lands, &c. Parcel of the Possessions of their Bishoprick, or united or appertaining thereunto, to any Person or Persons, Body Politick or Corporate,

other than to the Queen, her Heirs and Successors, and other than for the Term of one and twenty Years, or three Lives from the Time of such Estate made, and whereupon the accustomed yearly Rent or more shall be reserved or payable Yearly, during such Term of one and twenty Years or three Lives, shall be void to all Intents and Purposes.

*By Masters
of Colleges,
Dean and
Chapter,
&c.*

X. Stat. 13 Eliz. 10. All Leases, Conveyances or Estates, made by any Master or Fellow of any College, Dean and Chapter, or any Cathedral or Collegiate Church, Master or Guardian of any Hospital, Parson, Vicar, or any other having any Spiritual or Ecclesiastical Living, or any Houses, Lands, Tithes or other Hereditaments, being Parcel of their College, Cathedral, Chapter, Hospital, Parsonage, Vicarage, or other Spiritual Promotion, or belonging thereunto, other than for one and twenty Years or three Lives from the making thereof, and whereupon the accustomed yearly Rent or more shall be reserved and payable yearly during the Term, shall be utterly void to all Intents and Purposes.

XI. This

XI. This Act shall not make good *Leases ex-
cepted* any Lease or other Grant against the private Statutes of any College or Collegiate Church.

XII. This Act shall not extend to any Lease, hereafter to be made upon Surrender of a former Lease, or by reason of any Covenant or Condition contained in any former Lease, and still continuing; so as the Lease to be made, contain not more Years than the Residue of the Years of such former Lease, nor any less Rent than is thereby reserved.
See after.

XIII. *Stat. 13. Eliz. 20.* No Lease *Leases of
Benefices.
&c.* made of any Benefice or Ecclesiastical Promotion with Cure, or any Part thereof (and not impropriated) shall endure any longer than while the Lessor shall be ordinarily resident and serving the Cure of such Benefice, without Absence above 80 Days in any one Year; but that every such Lease, *so soon as it or any* *See after.* Part thereof shall come into any Possession or Use above forbidden, or immediately, upon such Absence, shall cease and be void; and the Incumbent so offending shall lose a Year's Profit of his Benefice, to be distributed by the Ordinary among the Poor.

of the Parish. Yet see *Degge's Parson's Counsellor*, 229.

Parsons.

XIV. Provided, That every Parson, allowed to have two Benefices, may demise one of them (upon which he is not most ordinarily resident) to his Curate only ; but such Lease shall endure no longer than during such Curate's Residence, without Absence above 40 Days in one Year.

XV. *Stat. 14 El. 11.* In the Statute of 13 *El. 20.* these Words [*So soon as it or any Part thereof shall come into any Possession or Use above forbidden, or*] repealed.

Parson or Curates.

XVI. All Bonds, Contracts, Promises, and Covenants hereafter to be made, for suffering or permitting any Person to enjoy any Benefice or Ecclesiastical Promotion, with Cure, or to take the Fruits thereof (other than such Bonds and Covenants made for Assurance of any Lease heretofore made) shall be admitted of such Validity (and no otherwise than) as Leases thereof made : The like Law is of Leases, Bonds, Promises, or Covenants made by Curates.

Houses and Grounds excepted.

XVII. The Branch of the Statute of 13 *El. 10.* made to avoid certain Leases, made by certain Persons

sons having Spiritual Livings, shall not extend to Houses situate in Corporations or Market-Towns, or the Suburbs thereof, nor unto the Grounds appertaining to such Houses, so as they be not the Dwelling-Houses of such Persons, nor have above ten Acres of Ground belonging to them.

XVIII. Provided, That no Lease *Proviso.* shall be made, by Force of this Act, in Reversion, or without reserving the accustomed yearly Rent at least, or without charging the Lessee with Reparations, or for longer Term than forty Years. Neither shall any such Houses be aliened, without purchasing presently after, other Lands in Fee-Simple, of as good Value, and as great yearly Value, as the Houses so alienated.

XIX. *Stat. 18 El. 6.* Upon Leases *Rent upon Leases by Colleges.* made by Colleges in the two Universities, *Winchester* and *Eaton*, the third Part of the Rent shall be reserved in Grain, to be delivered to them yearly at Days prefixed, after the Rate of *6 s. 8 d.* for a Quarter of Wheat, and *5 s.* for a Quarter of Malt, or under those Prices: Or it shall be in the Election of the Lessee to pay them in Kind, at the best

Rates found in those several Markets respectively the next Market-Days before the said Day prefixed for the Payment or Delivery thereof; and all Leases otherwise made, and all Bonds and Assurances given to the contrary, shall be void: Which said Grain or Money shall be expended for the Relief of the Commons and Diet of the said Colleges respectively without Fraud, in Pain of Deprivation of the chief Rulers of such Colleges respectively, and of all others consenting thereunto.

Exception.

XX. This Act shall not extend to any Lease to be made by the President and Scholars of St. John's College in Oxford, of the Manor of Fiskeld, to the Heir Male of Sir Thomas White, Knight, late Alderman of London, and Founder of the said College.

*Void
Leases.*

XXI. Stat. 18 El. 16. All Leases made by such Persons as are mention'd in the Stat. of 13 El. 10. where another Lease is in being, and not to be expired, surrendered, or ended within three Years next after the Making of such new Lease, shall be void: And all Bonds and Covenants for renewing of any such Lease contrary to this Act, or to the said

Statute

Ch. 2. Landlords and Tenants. § 1

Statute of 13 *El.* 10. shall also be void. Howbeit, this Act shall not extend to any Lease or Leases heretofore made by any such Person or Persons.

XXII. After Complaint to the Ordinary, and Sentence given upon any Offence committed by the Incumbent against the Stat. of 13 *El.* 20. whereby he ought to lose the Profits of his Benefice; the Ordinary, within two Months after such Sentence given, and Request made by the Church-Wardens or one of them, shall grant the Sequestration thereof to such Inhabitant or Inhabitants there, as to him shall seem convenient; and upon Default in the Ordinary, it shall be lawful for every Parishioner there to retain his Tithes, and for the Church-Wardens to take the Profits of the Glebe, and other Rents and Duties of such Benefice to be employed to the Use of the Poor, until the Sequestration shall be committed by the Ordinary; and then the Church-Wardens and Parishioners are to account to him or them to whom such Sequestration shall be committed, and he or they shall employ the said Profits to such Uses, as by the said Statute of

13 *El.* 20. are appointed, in Pain to forfeit the double Value of the Profits with-holden, to be recovered in the Ecclesiastical Court by the Poor of the Parish.

*Judgments
void.*

XXIII. *Stat.* 43 *El.* 9. All Judgments hereafter to be had for the Intent to have or enjoy any Lease contrary to the Statutes of 13 *El.* 20. 14 *Eliz.* 11. and 18 *El.* 11, or any of them, shall be deemed void, in such sort as Bonds and Covenants are appointed to be void, which are made for that Purpose.

*Leases con-
firmed.*

XXIV. *Stat.* 12 *Car.* 2. *cap.* 31. Leases and Grants by Colleges and Hospitals, and Elections of Heads, Masters and Fellows, made during the late Troubles, confirmed under some Exceptions and Proviso's.

*Dutchy of
Cornwall.*

XXV. *Stat.* 13 *Car.* 2. *cap.* 4. The King enabled to make Leases, Grants, and Copies of Offices, Lands, Tenements and Hereditaments, Parcel of the Dutchy of Cornwall, and a Confirmation of such as be made not exceeding one and thirty Years or three Lives.

If Bishops, Deans and Chapters, observe not the aforesaid Rules in their Demises, yet their Leases shall be

be good against themselves for their Lives. *Vide Co. Lit. 45. a. 1 Brownl. 21. 1 Leon. 131.*

Generally a Lease for Years must be for a Time certain, and ought to express the Term, and when it should begin, and when it should end certainly; and therefore a Lease for a Year, and so from Year to Year, is a Lease for two Years. *Comments and Determinations.*

Also a Lease from Year to Year, so long as both Parties please; after Entry in any Year, is a Lease for that Year, &c. till Warning be given to depart. *Noy's Max. 65.*

A Lease which is only voidable, and not absolutely void, must be made void by the Lessor's Re-entry (if he will) and putting out the Lessee: Or else it may be continued or affirmed by receiving the Rent. *Pract. Reg. last pub. 399.*

So that where there is a Clause in the Lease, That if the Rent be behind and unpaid at such a Day, &c. the Lease shall be void. Now if there was a Demand made at the Day, and the Rent not paid, this Lease is not absolutely void until an actual Entry; it is only voidable; and Acceptance of the Rent before any Entry made, shall make that which

was

vide p 96
Contra

was a voidable Lease, a good Lease.
Idem.

Rent-charge and Surrender. If a Lessee for Years grant a Rent-charge, and after surrender; yet for the Benefit of the Grantee, the Term hath Continuance; although in *Rei veritate* it is determined, and the Grantor himself shall not derogate from his own Grant, to make it void at his Pleasure. *Coke 8 Jac. 144.*

Gifts of Advowson. Tenant for Years of an Advowson granteth the next Avoidance and Donation, if the same Church should become void during the Term, &c. And afterwards surrenders his Term, yet if the next Avoidance be within the Term, the Grant is good, for the Years cannot determine but by the Effluxion of Time, and the Law implies a Limitation, if the Church do become void during the Term; *Quia expressio eorum qua tacite insunt, nihil operatur.* *Idem.*

Covenants to build, &c. A Lessee covenanteth for himself, his Executors and Administrators, with the Lessor: that he, his Executors or Assigns, shall build a Brick-Wall upon Part of the demised Premises, and afterwards the Lessee makes an Assignment of his Lease to C. D. for his Term; in this Case the Assignee is not bound to build the Wall,

Wall, because the Things were only collateral, and were not *in esse*, nor Part of the Demise, &c. *Godb. Rep. 69, 70, &c. 5 Co. 16, 17.*

But note, where the Lessee has built a Wall or House on the Premises, and afterwards assigns his Term, the Assignee is bound to keep such Wall or House in Reparation.

When a Covenant extends to a Thing in Being, Parcel of the Demise, then the Thing to be done by Force of the Covenant is annexed and appurtenant to the Thing demised, and shall bind the Assignee, although by express Words in the Covenant he be not bound. *Vide 5 Co. 17, 24. Dyer 27.*

But if the Covenant extends to a Thing which had no Being at the Time of the Demise made, that cannot be annexed or appurtenant to a Thing which had no Being. *Ibid.*

If a Lessee covenant to repair the Houses demised to him during his Lease; this is Part of the Contract, and shall bind the Assignee, although by the Covenant he is not expressly named. *Ibid.*

But where the Covenant concerns Assignees a Thing not in Being at the Time of the Demise, but to be made after ;
this

this shall bind the Covenantor, his Executors and Administrators, but not the Assignee. *Ibid.*

*Why quere?
assignee is not
obliged to build
therefore not
obliged to pay*

If a Lessee covenant for him and his Assigns, to build a House upon the Land of the Lessor, which is not Parcel of the Demise, or to pay any collateral Sum of Money to the Lessor, or to a Stranger, this shall not bind the Assignee. *Ibid. Quære.*

*Land and
Stock of
Cattle.*

If a Man demise Lands for Years with a Stock of Cattle, or Sum of Money, rendring Rent; and the Lessee covenants for him, his Executors, Administrators and Assigns, to deliver the Stock of Cattle or the Sum of Money at the End of the Term: This Covenant shall not charge the Assignee. *See after, Chapter 10.*

*Assignee
evicted.*

If an Assignee of a Lease be evicted, he may have a Writ of Covenant; so shall a Tenant by Statute, or by *Elegit*, or he to whom a Lease is sold by Vertue of an Execution.

Estovers.

If a Man grant to a Lessee for Term of Years, that he shall have so many *Estovers* as shall serve to repair his House, or that he shall burn in his House, or the like, during the Term; that is appurtenant to the Land,

Land, and shall run with the same as a Thing appurtenant, in whose Hands soever the same cometh. *Co. Inst.* 41.

The Statute extendeth only to Covenants which touch the Thing demised, and not to collateral Covenants. 32 *H. 8. c. 24. Vide antea.*

An Assignee of an Assignee, Executors of an Assignee, Assigns of Assignees, Executors or Administrators of every Assignee, may have an Action of Covenant, for all are comprised within this Word [Assignee] and the same Right that was in the Testator or Intestate, descends to the Executors or Administrators. *Cok. l. 5.*

A Lessor may have an Action for Rent against the Executor of the Lessee, after an Assignment made by him. *Leon. 127. 2 Vent. 209.*

If an Assignee assigns over, until Notice given of the Assignment to the Lessor and Tender of Arrears, he cannot by the Assignment discharge himself of the Rent. 1 *Lev. 215.* But that the Executor of a Lessee may assign before Rent-arrear without Notice. 3 *Lev. 295.*

A Lessee for a Hundred Years being out of Possession cannot assign. 1 *Lev. 270.*

Lessor

Lessor assigns his Rent upon a Lease for Years, and the Lessee attorns, it is said the Grantee may maintain an Action of Debt for the Rent: 1 Lev. 22.

Waste relieved in Chanc.

A Lease is made for Life, the Remainder over for Life, the Remainder over in Fee; the first Lessee maketh Waste: And because he in the Fee hath no Remedy by the Common Law, and Waste is a Wrong prohibited, he shall have Relief in Chancery. Crompton 49. b.

Not against a voluntary Act.

A Woman sole takes a Consideration for making a Lease for one and twenty Years, and then marries; and she and her Husband made the promised Lease; at the one and twenty Years End the Lessee surrenders, and takes a new Lease for one and twenty Years more, the Husband dies, the Wife sues the Lessee, who sues in Chancery to have the first Lease continued for the first one and twenty Years, and could not have Remedy, because the Surrender was voluntary, and the Court gives no Relief against a voluntary Act. 44 Eliz.

Concerning Leases, &c. by Baron and Feme, see D' Avers's Gen. Abr. Tit. Baron and Feme, fol. 698, 699, 700, &c. Also

Also where a Man shall be relieved in *Chancery* against Deeds and Leases, see *D'Anvers's General Abridgment*, Tit. *Chancery*, and Tit. *Leases*.

A Lease is made of a House and *House-boot*, Wood, wherein it is covenanted, &c. That the Lessee should have *House-boot* and *Fire-boot*; by this it is implied and meant, that he should not have any of the Woods to use, or convert to any other Purpose; but that they do belong to the Lessor: And the Lessor shall have Help in *Chancery*, leaving to the Lessee sufficient for *House-boot* and *Fire-boot*.

Under the Name of Lands, are of the comprehended not only Gardens, *Word Meadows, Pastures, Rivers, Woods, [Lands.]* Moors, Waters, Marthes, Furze and Heath, but also Messuages, Houses, Tofts, Mills, Castles, and such like. *Co. Lit. l. 1. c. 2. sect. 14* but of a House with the Appurtenances, no Land passes. *Pl. Com. 85. 6.*

If one that leases at Will does any Determination inconsistent with the Continuance of the Lease at Will, it shall determine it from such Time as the Tenant at Will takes Notice of it. If the Lessor says, the Lessee shall hold

hold it no longer, the Lessee (as soon as he knows of the Words) may take Advantage of them as a Determination of the Lease. 1 Ven. 247. Raym. 204. See after.

Lease and Release.

It was resolved, that a Lease for a Year, upon no other Consideration than reserving a Pepper-Corn, (if it be demanded) shall work as a Bargain and Sale, and so as to make the Lessee capable of a Release. 2 Mod. 249. 1 Mod. 262. 2 Vent. 35. 10 Co. Sutton's Hospital Case; and that the Reservation made a sufficient Consideration to raise an Use, as by Bargain and Sale.

Upon Lives

A Lease for 99 Years, if two Persons so long live, without saying [or either of them], determines upon the Death of either. 2 Vent. 74. 5 Co. 9. 2 Cro. 378. Dyer 67. & 2 Inst. 225.

Part for Lives, and Part for Years.

Where several Lands, held Part for Life, and Part for Years, are demised to A. for Years, to hold from the Time of the Death, Surrender, Forfeiture, or Determination of the Estate and Term aforesaid of the first Lessees, and the Estate in one of these Parcels determines, the Term granted to A. shall commence immediately in the said Parcel, altho' the

Ch. 2. Landlords and Tenants.

91

the other Estates are in being. 1
Saund. 183.

If a Lessee enters before his Term *Disseisor.* commences, and continues in Possession after, he is a Disseisor all the Time. 1 *Lev.* 46.

Upon a Lease made to two for *Waste.* their Lives, without Impeachment of Waste during the said Lessees Lives, it was held that this Privilege would hold to the Survivor; for 'tis reasonable to give the Privilege as large a Construction as the Interest. *Anderson* 251.

Note, If the Lessor seal the Lease *Sealing* and not the Lessee, yet it is good *Lease.* against the Lessor as if both had sealed. *Noy's Max.* 57.

And if at any Time there happen *Principal* any Variance between the Indentures, it shall be taken as the Deed of the Lessor is, and the other shall be intended only the Mistake of the Writer, because the Deed of the Lessor is the Principal, and the other but only a Counterpart. *Ibid.*

Deeds between Parties indented or not indented, are suable and releasable by the Parties, and not by Strangers, altho' they are to the Use of the Strangers. 3 *Lev.* 138.

To

To plead a Writing under a Man's Hand does not imply a Deed. 3
Lew. 234.

*Lease Pa-
 rol.*

If a Man demise any Lands or Tenements to another by Lease Parol, the Lessor ought to be seised of the Lands or Tenements which he so lets at the Time of the Lease Parol made, or else he cannot maintain an Action for his Rent; for the Lessee may plead that the Lessor had nothing in the Premises at the Time of the Lease made, and then is barred of his Action: But if the Lease be made by Deed indented, then the Lessee cannot plead this Plea thereunto. *Lit. Ten. l. 1.*

At Will.

If a Man lets Lands to another by Lease, to hold the same at the Will of the Lessee; the Laws intends it to be at the Will of the Lessor also, and he may put the Lessee out when he pleases; likewise if it be let at the Will of the Lessor, it is intended at the Lessee's Will also, for the Lessor cannot force him to stay longer than he please. *Coke 1 Part Inst. 55.*

Covenants.

A Covenant made between Landlord and Tenant, that the Tenant shall have a new Lease upon the Surrender up of his old Lease; and afterwards the Lessor makes a Lease by
 Fine

Fine for more Years to a third Person; in this Case the Lessor hath broke his Covenant, although the Lessee did not surrender: Which by the Words of the Covenant ought to have been the first Act; because the Lessor, by letting the Lease to a Stranger, did disable himself either to take the Surrender, or make the new Lease. *Noy's Maxims, p. 13.*

Rent in Arrear upon a Lease for Years, goeth to the Executors of the Lessor if he die. As if *John Doe* make a Lease for Years to *Richard Roe*, and the Lessee covenanteth and granteth to pay unto the Lessor, his Heirs and Assigns, the Sum of twenty Pounds yearly during the Term in the Lease granted: In this Case if the Lessor die, his Executors shall have the Rent in Arrear, and not his Heirs.

Where a Man covenants for himself and his Assigns to permit, &c. if a Breach be laid in the Assigns, this Covenant shall only relate to the Assigns after the Deed was made, and not before. *2 Vent. 278.*

Where Lessee covenanted to build three Houses upon the Premises, and keep them in Repair; he built five, and let one of them fall to decay,

decay, and it was adjudged that the Covenant extended to that also. 2 *Vent.* 128. 3 *Lev.* 265.

If a Man covenants not to inclose, Incloser with Gaps is a Breach of the Covenant. *Lit. Rep.* 267.

Action.

A later Covenant by a second Indenture cannot be pleaded in Bar to the former, but the Defendant must bring his Action on the last Indenture, if he will help himself. 2 *Ven.* 218.

Water-Course.

If a Man by Deed grants a Water-course and stops it, the Grantee shall have an Action of Covenant. 1 *Saund.* 322.

Estovers.

If a Lease be made of a House and *Estovers*, and the Lessor destroy all the Trees, the Lessee may have an Action of Covenant. *Id. Ibid.*

Pump.

Also if a Lease be made of a House and a Piece of Land (except the Ground on which the Pump stands) with the Use of the said Pump, the Lessee may repair the Pump, but no Action of Covenant lies against the Lessor for not repairing it. *Ibid.*

Executor.

When the Use of a Thing is granted, all is granted by which the Grantee may have and enjoy such Use. *Id.*

Although the Breach of the Testator's Covenant is by the proper Default

Ch. 2. Landlords and Tenants. 95

Default of his Executors; yet the Judgment ought to be of the Goods of the Testator. *Idem* 112.

An Action of Covenant does not *Repairs.* lie against a Grantor for not repairing the Thing granted. 1 *Saund.* 322.

An Assignee of a Reversion may *Action by* maintain Covenant for Repairs *a-Assignee,* against the Lessee, although Assignees &c. are not named in the Covenant in the Lease. 1 *Lev.* 109. Covenant lies for a Grantee of a Reversion against the Lessee after Assignment of his Term. 3 *Lev.* 233.

Any Words in a Deed purporting an Agreement to pay Money, &c. amounts to a Covenant to do it. 1 *Lev.* 48.

A Proviso to pay, amounts to a *Proviso.* Covenant to pay. *Id.* 155.

Covenant that he or his Under-Tenant should not dig, &c. and B. *nant.* who held of F. who holds of H. who held of E. did dig, &c. Held B. was Under-Tenant of E. 1 *Lev.* 144.

A Lessee covenants with the Lessor, his Executors and Administrators, to repair; this shall go with the Land, and the Heir may sue upon it. 2 *Lev.* 92.

Exposition. In expounding all Deeds, the Words and the Intent of the Parties ought to be observed, especially in Covenants. *Lit. Rep.* 209. 3 *Leu.* 100.

Covenant if Rent be behind. If there be a Covenant in a Lease, that if the Rent be behind and unpaid for such a Time (that is, by the Space of so many Days after the usual Day or Time of Payment in the Lease appointed and reserved) then the Lease to be void; in this Case, although the Lessor do accept of the Rent after such Failure made, here no such Acceptance of the Rent can make the Lease good. *Dyer. f.* 51.

For net repairing, &c. If a Tenant take Houses and Lands by Lease for Years and covenants with the Lessor to support, uphold and maintain the Houses during this Term, and to leave the Houses and Lands in as good Repair, Plight and Estate, as he found them: In this Case, if it should happen that the Houses be casually burned by Fire or Lightning, or blown down by a Tempest, or destroyed by any other Accident, if the Lessee do not repair and build them again, and leave them as good as he found them, the Lessor may sue his said Covenant against him at the End of his Lease; but if a Tenant make Waste in cutting

Waste.

*vide
page 83.
Covenant*

ting of Wood or Timber contrary to the Proviso's, Exceptions or Covenants in this Lease; for such a Breach the Landlord may bring his Action of Covenant before the End of the Term. *Noy's Max. p. 16.* See after.

A Man takes a Lease for Years, and *Against* covenants and grants to and with *Assignee.* the Lessor, for him and his Executors, to repair the Houses as often as need requires: And afterwards the Lessee assigns over the Lease to another, and the Assignee suffers the Houses to decay for want of Repairs; in this Case the Lessor may bring an Action of Covenant against the Assignee, although he be not named in the Covenant. *Hugh's Grand Abridgments, 1 Par. p. 492. c. 19.*

A Landlord lets a Lease, and co-*Hedge-boot* venants with his Tenant that he *by Assign-* shall have sufficient Hedge-boot, to *ment.* be assigned him by the Landlord or his Bailiff: In this Case the Tenant may not take Hedge-boot without Assignment. *Co. 1 par. Inst. fol. 41.*

If a Man by Indenture take a Lease *To repair.* of a House that is old, ruinous, or wanteth Repairs, and covenants with the Lessor to leave this House at the End or Expiration of the Lease in good Repair. In this Case he is bound

to leave this House in good Repair ; but if he do not covenant to do it, the Law then will not oblige him to do it. *Perkins Tit. Conditions, 738.*

How Houses are to be now built within the Bills of Mortality, according to the late Act of Parliament, see at the latter End of this Treatise.

Woods.

If a Man by Indenture takes a Lease for Years of a Wood, and covenants with the Lessor to leave his Wood in as good a Condition as it was at the Time of the Lease made; and during the Term the Wood is destroyed and blown down by violent Winds and Tempests: In this Case, the Landlord can have no Action against the Tenant for the not performing of this Covenant, because it is impossible for him to perform it; and the Law enforceth no Impossibilities: Otherwise it is if he take a House, and that be blown down. *Hugh's Grand Abridg. p. 499.*

Bonds for Rent.

Touching Bonds for Performance of Covenants, if a Man takes a Lease for Years rendring Rent, and enter into Bond to the Lessor to perform all Covenants and Agreements contained and comprized in the Lease; if he fail in Payment of Rent, the Bond

Bond is forfeited; for the Payment of Rent is an Agreement. *Goldsborough p. 16.*

If a Man be bound in a Bond to *For Re-* repair the Houses of the Obligee as *pairs.* often as need shall require during a certain Time, and afterwards the Houses want Reparation: In this Case, although the *Obligor* doth not know that they want Reparations, yet he is bound to take Notice of it at his Peril, for Ignorance will be no Excuse in this Case, because he hath bound himself to it. *Dr. & St. lib. 2. cap. 47.*

But if the Condition had been, *To repair* That he should repair such Houses as *upon As-* he to whom he was bound should *signment.* assign; and after he assigneth certain Houses to be repaired, but he that is bound hath no Knowledge of that Assignment; this Ignorance shall excuse him in the Law, because he hath not bound himself to any Reparation in certain, but such as the *Obligee* will assign; and if he assign none, the *Obligor* is bound to none: And therefore, because he that should make the Assignment is privy to the Deed, he is bound to give Notice of his own Assignment; but if the Assignment had been appointed to have

been made to a Stranger, then the *Obligor* had been bound to have taken Notice thereof at his Peril. See more *Observations on Covenants in Leases, &c. at the End of this Treatise, Chap. 10.*

Warranty. If a Man makes a Lease for Years with Warranty, yet this is not a Warranty in the Law, but a Covenant, because the Lease is but a Chattel; and if the Lessee be ousted, he may bring his Action of Covenant against the Lessor.

*Rent in
Suspence.*

If *A.* be seised of Twenty Acres of Land, and let the same to *B.* by Lease for Life or Years, and *A.* reserves to himself Five Shillings Rent payable at *Christmas*, and *B.* binds himself to *A.* in a Bond of one Hundred Pounds to pay the Rent reserved upon the Lease justly according to the Law; if before any Day of Payment *A.* puts *B.* out of any Part of the Land, and he doth occupy the Residue for the whole Term, and will not pay any Rent, yet the Bond is not forfeited; for by putting the Tenant out of Parcel of the Land, the whole Rent is in Suspence: But if one Day of Payment be past before the *Ouster*, then the Tenant must pay the Rent, or else he forfeits his Bond.

But

But if a Stranger, who hath no Right in the Lands, do put out the Lessee for Years out of the same Land before any Day of Payment, and keep Possession thereof until the Day of Payment be past; in this Case the Tenant ought to pay his Rent at the Day whereon it is appointed to be paid, or else he forfeits his Bond.

If Three *Copartners* be seised of a *Copartners*. Manor, and One of them without Consent of the other Two lets a Lease of the whole Manor in her own Name unto *I. D.* for five Years, paying Ten Pounds yearly at *Christmas* unto the Lessor and her Heirs, and *I. D.* enters into Bond in Five Pounds to pay the Rent accordingly, and before any Day of Payment is come the other Two *Copartners*, who agreed not to the letting of the Lease, do put the Lessee out of the whole Manor, and keep the Possession till a Day of a Payment is come: Here the Lessee ought to pay a Third Part of the Rent reserved to his Lessor, or otherwise he forfeits his Bond; because the other Two *Copartners*, who ejected him out, have Right but in Two Parts of the Manor. *Perkins* 828.

Condition not to alien. A Man makes a Lease to three Persons upon this Condition, That neither they nor any one of them shall alien, set, or let that Lease to any other without Licence first obtained from the Landlord: Now if the Landlord do give Licence to any one of them to let or alien, then the other two may alien without Licence: For the Condition being determined to one, is determined to all. *Hugh's Grand Abr.* 1 Part. p. 428. See after.

In the same Nature is a Release where many Persons commit a Trespass, if he against whom the Trespass is committed do release one of the Trespassers, that Release is as effectual to all the rest, as if they had been particularly named therein.

Action for Arrears. If a Landlord do enter for a Condition broken, or the Tenant surrender up his Lease, or his Term be expired; yet the Landlord may have an Action of Debt for the Arrears of Rent if any be. *Noy's Max.* p. 72.

Not to alien. If a Man lets a Lease of Lands upon a special Condition; that is, that the Lessee shall not alien the same to such a Man, or such a Man; then the Con-

Condition shall be taken according to the Words; and notwithstanding that Condition, they may be alienated to any other, but to them to whom it is expressly prohibited that the Lands should not be aliened unto: And if the Lands in that Case be aliened to one that is not excepted in the Condition, then he may alien the Land to him that is first excepted, without breaking of the Condition: For Conditions be taken strictly in the Law, and without Equity.
Dr. & St. l. 2. c. 35.

As, if a Lease be made to *A.* upon Condition that he shall not let or alien the same to *B.* if the Tenant alien to *C.* and he alien it to *B.* the Condition is not broken.

If a Man be seised of Lands in Fee, *Lease etc.* and let the same by Indenture *ofcused by* Lease to a Stranger, paying Five *Livery and* Pounds Rent *per Annum*, with a Condition, That if the Lessee will hold over Ten Years to him and his Heirs, that then he shall pay Twenty Pounds *per Annum*, and the Indenture is executed by Livery and Seisin to the Lessee: In this Case the Lessor shall have an Action of Debt for the Rent in Arrear within the Ten Years; which proveth the Freehold and the

Fee are not in the Lessee before the Ten Years expired: But after the Expiration of the Ten Years, if the Lessee doth continue the Possession of the same Land, and doth occupy the same by Vertue of the *Indenture*, then he hath Fee, and shall pay the Twenty Pounds as the Rent-Seck. *Perkins* 710. cap. 11.

*When Free-
hold pas-
seth.* But if a Man seised in Lands doth let the same Land by Lease for Term of Life, yielding to him a Rose for the first Six Years; and if he will hold the Land over the Six Years, then to pay Three Marks *per Annum*; here the Freehold is immediately in the Lessee. *Co. 1 par. Inst. f. 218. b.*

*When not
upon Con-
ditions.* A Man makes a Lease for Years, with this Condition, That if the Lessor do alien the Reversion within the Term granted by the Lessee, then the Lessee shall have the Fee; and the Lessor doth alien the Reversion in Fee by Fine to a Stranger: In this Case the Lessee shall not have a Fee, for the Freehold and the Fee are lawfully in the *Conuuzee* before the Lessee can take it by Condition: But if the Lessor had granted the Lands to a Stranger by Deed only, then the Lessee should have had Fee by the Condition. *Perkins* 729, 739.

If

Ch. 2. Landlords and Tenants. 105

If a Man have a Lease for Years, ^{Privy in} and demise or grant the same upon ^{Right.} Condition and die; his Executors or Administrators shall enter for the Condition broken; for they are privy in Right, and represent the Person of the Dead. *Perkins* 833.

If a Man make a Lease for Years ^{Rent not} upon a Condition that the Rent shall ^{acquitted} be paid at *Christmas*, and before that ^{by Release.} Time come the Lessor give a general Release to the Lessee of all Actions and Demands; this Release doth not acquit the Lessee of the Rent, but the Lessor may sue for it, because it was neither due, nor to be paid at the Time of the Release made; and it is a Thing not meerly in Action, because it may be granted over. *Lit. lib. 3. c. 8:*

14128

If a Landlord lets a Lease for ^{Lease to} Years to Two Tenants to hold joint-^{Joint. Tenants.} ly, with a Condition, That if the Lessees die before the End of the Term, the Lease shall be void: Now these Lessees make Division, and one of them aliens his Part, and dies: In this Case the Lessor cannot enter upon the Part of him that died, but the Alienee shall enjoy his Half-part during the Life of the surviving Lessee. *Dyer* p. 67.

*Devise a
Breach of
Condition.*

A Lease made for Years upon Condition, That if the Lessee demise the Premises or any Part thereof, other than for a Year, to any Person or Persons, then the Lessor and his Heirs to re-enter; the Lessee afterwards devises this Lease to his Son by his Will: This is a Breach of the Condition.

*Who may
take Ad-
vantage of
a Condition.*

If a Man of his meer Motion give Lands to *H. H.* and to his Heirs by Indenture, upon Condition, That he shall yearly at a certain Day pay unto *John at Style*, out of the same Land, a certain Rent; and if he do not pay the Rent, that then it shall be lawful to *John at Style* to enter; and if the Rent in this Case be not paid to *John at Style*, the said *J. S.* may not enter into the Lands by the Law, though the Words of the Indenture be, That he shall enter; for there is an ancient Maxim in the Law, That no Man shall take Advantage in a Condition, but he that is Party or Privy to the Condition: And this Man is not Party nor Privy, and therefore he shall take no Advantage of it. *Dr. & Sr. lib. 2. cap. 20. fol. 93.*

Intent.

In many Cases the Intent of the Party is void to all Intents, if it be not grounded according to the Law.

As,

As, if a Man make a Lease to another for Term of Life, and after, of his meer Motion, he confirmeth his Estate for Term of Life to remain after his Death to another and his Heirs: In this Case, that Remainder is void in Law; for by the Law there can no Remainder depend upon any Estate, but that the same Estate beginneth at the same Time that the Remainder doth: And in this Case the Estate began before, and the Confirmation enlarged not his Estate, nor gave him any new Estate. But if a Lease be made to a Man for the Term of another Man's Life, and after the Lessor, only of his meer Motion, confirmeth the Land to the Lessee for Term of his own Life, the Remainder over in Fee; this is a good Remainder over in Fee. *Dr. & Stud. C. 20. f. 94.*

No Grant can be made, but to him that is Party to the Deed, except it be by Way of Remainder; And therefore, if a Man make a Lease for Term of Life, and afterwards the Lessor grant to a Stranger, that the Tenant for Term of Life shall have the Land to him and his Heirs; that Grant is void; if it be made only of his meer Motion with-

out

out Recompence. *D. & Stud. lib. 2. c. 20. p. 94.*

Intent made void. Likewise if a Man make a Lease for Term of Life, and after grants the Reversion to one for Term of Life, the Remainder over in Fee, and the Tenant attorneth to him that hath the Estate for Term of Life only, intending that he should have Advantage of the Grant: His Intent is void, and both shall take Advantage thereof, and the Attornment shall be taken good according to the Grant. *Ibid.* See after.

Occupancy. If a Tenant for the Term of another Man's Life dies, living the other Man, he that doth first enter upon the Estate, after his Death, shall be Tenant for the other Man's Life, and shall be liable to the Payment of the Rent reserved. *Co. 1 par. Inst. fol. 41.*

In the Case of Occupancy (which ariseth by Conveyance) as,

Simile. Where Lands are conveyed to *A.* for the Life of *B.* and *A.* dies without making any Estate or Assignment thereof, here whosoever first entreth after the Death of *A.* getteth Property in that Land during the Life of *B.* for the Land cannot revert to him that leased to *A.* till *B.* die; and to the Heir of *A.* it cannot

Ch. 2. Landlords and Tenants. 109

not go, for it is not an Estate of Inheritance, nor descendible to the Heir without special Words, and as for the Executors of *A.* they cannot have it, for that it is not an Estate Testamentary.

But *Co. Lit. f. 41.* shews how this ^{How prevented.} Occupancy may be prevented, by adding these Words in the Grant, *To have and to hold to A. and his Heirs, during the Life of B. for then 'tis descendible to the Heir.*

How also it may otherwise be ^{Aliter} prevented by assigning the Lease for Life over to Friends, and their Heirs, in Trust during the Life of *B.* But the Statute 29 *Car. 2. cap. 3.* hath provided, That the Lessee or Grantee may devise such Estate for another's Life, by his Will, in Presence of Three or more Witnesses.

And if he devise it not, and his ^{How by Statute} Heir become Occupant, it shall be chargeable in his Hands as Assets by Descent, as in case of Lands by Fee-Simple.

And in case there be no Special Occupant, then it shall go to the Executors or Administrators of the Party that had the Grant, and shall be Assets. See the *Statute.*

And

*Executor
de son
Tort.*

And some have held, That an Executor *de son Tort* is as much within this Act to be charged as a rightful Executor: And that the Entering into the Land and Leasing it, is enough to make him an Executor *de son Tort*. *Q. Et vide 3 Co. 33, &c.*

*Tenant
grants
Part of the
Term.*

If a Tenant hath a Lease for Twenty Years of Lands and Tenements, and grant the same Lands for Part of his Term to a Stranger, reserving to himself Forty Shillings Rent; in this Case he may distrain for the Rent reserved, or have an Action of Debt at his Pleasure, because by common Intendment he is to have the same Land after the Years determined, because he hath granted but Parcel of the Years, so that the Remainder remains in him. *Perkins 693.*

If Rent be granted to a Man, he may grant it away to another before he is seised thereof. *Idem 108.*

*Husbands
Executors.*

If a Man and his Wife be ejected of a Term in the Right of his Wife, and the Husband bring an *Ejectione Firma* in his own Name, and do recover, and die; in this Case, his Executors shall have it, and not the Wife, because the Recovery in his own

Ch. 2. Landlords and Tenants.

PIE

own Name did vest the Term in himself. *Co. 1 par. Inst. fol. 46.*

If a Man be possess'd of a Term of Forty Years in Right of his Wife, and make a Lease for Twenty Years reserving Rent, and die; here the Executors of the Husband shall have the Rent for that Term, but the Wife shall have the Remainder of the Term when the Twenty Years is out: But if he had granted the whole Term, she could have had nothing. *Co. Ibid.*

A Release made to a Tenant for Term of Years before his Entry, is void; but a Release of the Rent before Entry, is good. *Id. 1 par. Inst. fol. 270.*

If a Man makes a General Release of all Demands, it doth not release Rent due upon a Lease for Years. *2 Lev. 210.*

The Tenant may grant away his Interest to another before Entry; and although the Lessor do die before Entry, yet the Tenant may enter into the Lands; and if the Lessee die before he enter, his Executors or Administrators may enter; and if a Lease be to Two, and One of them die before Entry, the other may enter by Survivorship; and a

Lef.

Lessor cannot grant away a Reversion by the Name of a Reversion, before the Entry of the Tenant,

*Eftovers
appurte-
nant.*

If a Man grant to a Tenant for Years, that he shall have so many *Eftovers* as shall serve to repair his House, or that he shall burn within his House, or such like, during the Term; this is appurtenant to the Land, and shall run with the same, as a Thing appurtenant, in whose Hands soever the same cometh. *Co. 1 par. Inst. f. 41.*

*Tenants in
Common.*

If Two Tenants in Common do grant a Rent of Ten Shillings, this is several, and they shall be charged with Twenty Shillings Rent: But if they make a Lease and reserve Ten Shillings Rent, they shall have no more but only Ten Shillings between them. *Id. 1 par. Inst. f. 197.*

Copartners.

If Two Copartners make a Lease reserving Rent, they shall have this Rent in common as they have the Reversion: But if afterwards they grant the Reversion, excepting the Rent, then they shall be Joint-Tenants of the Rent.

*Apportion-
ment.*

If a Man leases Lands for Years reserving Rent, and a Stranger doth recover Part of the Land, then the Rent shall be apportioned, *viz.* di-

Ch. 2. Landlords and Tenants. 113

vided, and the Tenant shall pay, having respect to that which is recovered, and to that which still doth remain in his Hands according to the Value, to each Party proportionably. *Dyer* 56 & 82. See after.

And for a full understanding of Apportionment of Rent; See *D'Anvers's General Abridgment*, fo. 504, 505, &c. Tit. *Apportionment*.

If a Man make a Lease excepting *Exception* a Close and Wood, the Law giveth him a Way to come to it.

If a Tenant for Years do take a *Surrender* new Lease for more Years, this is a *in Law*. Surrender in Law of the old Lease. *Watt and Maidwell's Case. Hill. 3 Car. R. 1302. B. R. Perkins 117. Hutton Rep. 104.*

A Lessee for Years cannot surren- *By a Lessee.* der before his Term begin, neither can he surrender Part of his Lease, but he may grant Part of it. *Noy's Max. 74. Vide ante.*

If a Tenant for Life or Years remove his Goods out of the House and Land, by Reason of the Greatness of the Rent, or for some other Cause, and the Lessor do enter into the House and Lands; this is no Surrender of the Lessee. *Idem, p. 72.*

If

Assignment. If a Tenant for Years assign over his Term and die, his Executors shall not be charged for Rent due after his Death.

And if the Executors and Administrators of a Lessee for Years do assign over their Right in the Lease, there lieth no Action of Debt against them for Rent after such an Assignment by them made: But *vide contra ante, & 2 Ven. 209.*

Assignment. If a Tenant for Years assign his Lease to another, the Landlord may charge which of them he will: But if he once accept of the Rent from the Assignee, knowing of the Assignment, he cannot afterwards bring an Action of Debt against the Lessee for Rent due after the Assignment. *Hern. Law of Conv. p. 110.*

Acceptance of Rent. For, by Acceptance of Rent by the Lessor from the Assignee, the Privity of the Contract is extinguished, and the Action of Debt against the first Lessee is gone. 1 *Saund. 240, 241.*

But after such Acceptance, the Lessor or his Assignee may maintain an Action of Covenant against the first Lessee, upon his Covenant for Payment of Rent. *Idem 240. Vide 2 Saund. 302.*

A Les-

A Lessor may refuse to accept of an Assignee to be his Tenant at one Time, and yet may accept of him afterwards when he pleases. 2 Saund. 182. And so may have his Election to sue the Lessee or his Assignee for the Rent; but after Acceptance from the Assignee, 'tis otherwise, as above.

If a Lessor grant away the Re-Reversion^{version}, after the Assignment of the^{granted} Lessee; in this Case the Grantee^{away} cannot have an Action of Debt against the Lessee for the Rent, because there is no Privity between them. Popham 55.

It is noted, That a Reversion of By Deed a Term is not assignable without only. Deed and Attornment. 3 Lev. 155.

But by a late Act for Amend-Attorn-ment of the Law, 4 & 5 Annæ, It^{ment dis-} is enacted, That all Grants or Convey-^{pened} ances thereafter to be made, by Fine or^{with} otherwise, of any Manors or Rents, or of the Reversion or Remainder of any Messuages or Lands, shall be good and effectual to all Intents and Purposes, without any Attornment of the Tenants of any such Manors, or of the Land out of which such Rent shall be issuing; or of the particular Tenants upon whose particular Estate any such Reversions or Remainders

mainders shall or may be expectant or depending, as if their Attornment had been had and made.

Upon Notice.

Provided nevertheless, That no such Tenant shall be prejudiced or damaged by Payment of any Rent to any such Grantor or Conusor, or by Breach of any Condition for Non-Payment of Rent, before Notice shall be given to him of such Grant by the Conussee or Grantee.

Use.

If a Lease for Years be made to a Man without any Consideration, the Lessee shall be seised to his own Use. Perkins 537.

Leases intent avoided.

If a Man make a Lease of Lands to another, and to his Heirs, for the Term of Twenty Years, intending that if the Lessee die within the Term, that then his Heirs should enjoy the Lands during the Term: In this Case his Intent is void; and if the Lessee die, his Executors, and not his Heirs, shall enjoy the Term; for by the Law of the Land, all Chattels shall go to the Executor, and not to the Heir. Dr. & St. l. 1. c. 24.

Appurtenances.

If a Man lets a House with the Appurtenances, no Land passes thereby; but if it be with all Lands thereunto belonging, here the Lands used with-

Ch. 2. Landlords and Tenants. 117

with the Houses do pass. *Hern's L. of Conv. p. 104.*

If a Man take a Lease of his own Land by Indenture, he is then concluded to say, That the Lessor had nothing in the Land at the Time of the making of the said Lease; but after the Lease is out, the *Estoppel* is removed. *Terms de Ley Estoppel Co. 1 pa. Inst. fol. 47.*

If Two Persons be Joint-Tenants of a Lease for Years, and one bid the other go out of the House, and he goeth out; he that goeth so out may have an *Ejectione Firma* against the other, as well as if he had ejected him out by Force. *Beverlie's Case, 24 Car. Clayton's Rep. p. 111.*

One who had Power to lease for ten Years made a Lease for Twenty Decreed in Equity, That it was a good Lease for ten Years. *Perry v. Bowen. 15 Car. 2 Chanc. Cases 1st p. 23.*

A Lease was made to one who assign'd it to another, i. e. the Lessor receiv'd the Rent of the Assignee which had become due in his time, but had no particular Notice given him of the Assignment: It was adjudg'd in this Case that no special Notice need be given the Lessee of the Assignment,

signment, but that the Acceptance of the Rent of the Assignee was a sufficient Notice, and he could not resort to the first Lessee for his Rent afterwards. *Mich. 11 Jac. B. R. Marsh & Brace's Case. 2 Bulstr. 151.*

Lessee may dig in Mines that are open only.

Where one lets his Land for Life or Years in which are Coal-Mines that are open, the Lessee may dig them; but the Lessee cannot make new Mines where none are open before. *Shepherd's Abridg. 1224.*

Tenant paying his Rent to a Husband de facto, discharg'd.

The Plaintiff marry'd the Defendant *Wallis* (who was before marry'd to another Woman) *Wallis* made a Lease of her Land, and receiv'd the Rent of the Tenants: The former Marriage being discover'd, the Plaintiff brought an *Indebitatus Assumpsit* against *Wallis* for Money receiv'd to her Use, and had a Verdict; And the Court held that *Wallis* being visibly her Husband the Tenant was discharg'd; at least that the Recovery against *Wallis* in this Action wou'd discharge the Tenant. *Hasser v. Wallis. Hill. 6. Anna, B. R.*

Lessor disturb'd in his Passage to some Rooms excepted, Co-tenant lies.

Lease of a House excepting two Rooms and a free Passage to them. The Lessee assigns, and the Assignee disturb'd the Lessor in his Passage thereto; whereupon the Lessor brought

brought his Action. *Per Cur'*. The Action lies; but if the Disturbance had been in the Rooms excepted, no Action of Covenant would have lain, for they were not demised; but where the Lessee agrees to let the Lessor have any thing out of the demised Premises, as a Way, Common, &c. In such Case Covenant lies for the Disturbance. *Cole's Case Hill. 3 W. & M. B. R. Salk. 196.*

Lessee covenanted for him and Assignee not his Assigns, to rebuild and finish the House within such a time, and after the time expired, the Lessee assign'd over the Premises, the House not being built and finish'd. *Per Holt,*

Ch. Justice. The Covenant will not bind the Assignee, because it was broke before the Assignment; *aliter*, if it had been broke after, and the Lessee had assign'd before the time expired. *Grescot v. Green. Pasch: 12 W. 3. B. R. Salkeld 199.*

Where a Lessee for Years sets up any thing for the Convenience of his Trade, such as Stalls, Coppers, &c. he may remove them at any Time during his Term, and they are seizable on a *Fi Fa*. But what he does to compleat or beautifie the House, as laying of Hearths, setting up Chimney-

ney-Pieces, &c. he cannot remove them, neither can they be taken in Execution. *Poole's Case, Mich. 2. Annæ. Salk. 368.*

C H A P. III.

Of Payment of Rent, Acceptance and Extinguishment thereof; Demands, Entries, Dates, Continuance, Limitations and Determinations of Leases.

Caution. **I**T ought to be a principal Care of a Tenant, above all Things, to provide his Rent at the Time of Payment, whereby he may avoid much *Slavery* and *Knavery* of cruel biting Landlords.

Legal Day of Payment. If a Tenant be to pay his Rent to his Landlord at our *Lady-Day* and *Michaelmas*, or within Fourteen or Fifteen Days after either of the said Feasts; in this Case he is not bound to pay his Rent until the last Day limited for Payment, for that is the legal Day of Payment, and the other before voluntary.

* *Fifteen Days after any of the said Days.*

* And if there be a Clause, That if the Rent be behind by the Space of
Fifteen

Ch. 3. Landlords and Tenants. 121

Fifteen Days (more or less) after any of the said Days of Payment, then the Lease to be void: In this Case, if the Time before limited be fifteen Days, then the Tenant shall have thirty Days after any of the said Feasts, to save his Lease: But if the Clause in the Lease be, That if the Rent be behind for the Space of Fifteen Days next after either of the said *Feast-Days* of Payment, here the Tenant hath but fifteen Days only allowed to him: And so the Diversity is to be noted in this Case in the *Nota*. Words of a Lease, which with a very little and scarce observable Alteration makes so much Advantage for the Tenant. *Co. 10. lib. f. 227. Coke 1 par. Institutes, f. 202. Hern Law of Conv. p. 23.*

If a Man take a Lease for Years to pay his Rent at our *Lady-Day* and *Michaelmas*, or within fifteen Days after either of the said Feasts, and the Landlord die after either of the said Feasts, and before the fifteen Days be out; the Heir in this Case shall have the Rent then, for the first Day is but voluntary, and the legal Day of Payment is at the end of the fifteen Days: And if the Tenant before that Day pay the Rent, such

G Pay-

Payment is voluntary, and not satisfactory; but if Payment be in the Morning, and the Landlord die at Noon, it is good to give Seisin: And though this Payment be voluntary, yet it is satisfactory against the Heir. *Hare and Sawill's Case. M. 7. Jac. in Com. B. Brownl. Rep. 2 par. 273. Hern. p. 22, 23.*

*Landlord
when to be
sought for.*

If a Tenant for Years be to pay his Rent at *Michaelmas*, and to perform other Covenants: and if he be bound in any Obligation to pay his Rent precisely at the Day, he must in this Case seek out his Landlord to pay him; but if his Obligation be only to perform the Covenants in the Lease, he may then tender his Rent upon the Land, (if no other Place be by Agreement appointed for the Payment thereof) and it is sufficient; for the Payment is of the Nature of the Rent reserved. *Manly and Jennings's Case. Pasch. 10 Jac. in C. B. Brownl. Rep. 2 par. p. 176. Noy's Max. p. 80.*

*Acquit-
tance.*

Note, A Man is not bound to pay an Annuity without an Acquittance; but a Rent-Service or Rent-Charge he is: And therefore in an Action of Debt brought against a Man for Rent due upon an Indenture of Demise

mise of Lands, he may plead Payment without an Acquittance. *Perk. Sect. 780. Pract. Reg. 495.*

Also, if he that hath Rent-Service Discharge or Rent-Charge accepts the Rent by Acquittance. due at the last Day, and gives an Acquittance for it, all the Arrearages of Rent due before are hereby discharged. *Co. Lit. 373. a. Hern's Con. 40. 3 Co. 66.*

Payment of Money before the Day appointed is in Law Payment at the Day. *Pract. Reg. 495.*

See the late Act for Amendment of the Laws, concerning Payment of Money into Court.

When one is to pay Rent at a certain Day, he hath all that Day till ^{Payment} before Sun-Night to pay it: but if it be a great ^{Sum} Sum, he must then have it in Readiness so long before Sun-set, as they thar are to receive it may see to tell it, for they are not bound to tell it by Candle-light. *See after. 146*

If a Parson lets his Glebe-lands to ^{Glebe-} a Lay-man, the Tenant shall pay the ^{Lands.} Parson Tithe of that Land besides the Rent: For the Tithes are of common Right.

If a Man let out by Lease a Stock ^{Stock let} of Cattle or other Goods, (as it is ^{out.} very usual now-a-days, to lease out

Silft-Stocking-Frames to the *Weavirs*) and the Rent be to be paid at several Days; if the Rent in this Case be in Arrear, the Lessor cannot bring an Action against the Tenant or Occupier thereof, until all the Days be expired: In like manner as it is in an Obligation with Condition for several Payments; because these are Personal Contracts. But it is otherwise in Case of a Lease for Years, which is a real Contract; for there the Landlord may have an Action of Debt against the Tenant after every Day of Payment, if Default be made, or he may distrain at his Election. *Co. 1. Inst. f. 47, & 292.*

*Rent to
Joint-Tenants.*

If there be two Joint-Tenants, and they make a Lease for Years by Parol or Deed-Poll, and reserve Rent to one of them, this shall enure to them both: But if it be by Deed indented, it shall enure to him alone by way of Conclusion. *Co. 1 par. Inst. f. 47. Co. 8. l. f. 70, 71.*

Dower.

If an Heir let a Lease to a Tenant for Life, and reserves a Rent; against whom the Mother of the Heir recovers her Dower, and dieth; the Tenant shall have the Land again for his Life, and the Rent is revived, *Coke on Lit. f. 42.*

If

Ch. 3. Landlords and Tenants. 125

If the Successor of a Parson or Vi-Parson, can accept the Rent of a Lease for Years made by his Predecessor; yet this Acceptance is worth nothing, for the Lease is void by Death; but of a Lease for Life it is otherwise. *Tenant's Case, l. 3. f. 65, 66.*

But if a Bishop accept the Rent *Bishop* upon a Lease for Years, he shall never avoid it; for it was but voidable only, and his Acceptance hath now confirmed it.

If a Man hath Lands in the Right of his Wife, and he and his Wife let these Lands for Years reserving a Rent, and afterwards the Husband dies, and she before any Day of Payment takes another Husband, who accept the Rent and dies: By this Acceptance the Lease is affirmed. *Acceptance by Husband.*

In like manner, if a Man and his Wife let the Lands of his Wife for Years rendering Rent, and the Husband dies; if the Wife accept the Rent, it is a good Lease. *Terms of the Law, Acceptance.* *Simile by Wife.*

But if a Tenant for Life lease Lands for Years and dies, the Lease is void; and the Rent which is reserved upon the Lease is determined. And although he in Remainder do accept

the Rent, yet his Acceptance will not make it good : For when it is once void by Death, no Acceptance after will make it good.

Tenant by Dower.

So likewise if a Tenant in Dower lease for Years and die, the Lease is void, and Acceptance of the Rent by the Heir will not make it good again.

Confirmation.

A Lease for Years may be confirmed for a Time, or upon Condition, or for a Piece of the Land : But if it be a Frank-Tenement, it shall enure to the whole absolutely. *Noy's Max. p. 78.*

Affirmance.

Observe this Difference between a Lease for Life and a Lease for Years : In case of a Lease for Life, though the Conclusion of the Condition be, that it will be void, yet Acceptance of the Rent due after the Breach doth affirm it, and make it good again. *Pennant's Case, 38 Eliz. Co. 3. l.*

Parson's Lease.

If a Parson let a Lease for Years of his Glebe-land, if it be confirmed by Patron and Ordinary, it shall bind the Successor, or else not. *Coke Inst. f. 300.*

Remainder.

If a Lease be made to a Man for the Term of another Man's Life, and afterward the Lessor only of his

his meer Motion confirmeth the Land to his Lessee for Term of his own Life, the Remainder over in Fee: This is a good Remainder in the Law. *Dr. & St. l. 2. cap 20. f. 93.*

If a Man lets Lands for Life or Rent *extinguished, &c.* Years, reserving Rent, and do enter into any Part thereof and take the Profit, the whole Rent is thereby extinguished, and shall be suspended during his Holding thereof. *Leonard's Rep. 110. Goddard's Case, Mich. 34 El. Com. Banc. Owen's Rep. fol. 10. Hern. L. Conv. p. 118.*

In what Case there shall be a Re-*Revived.* viver of Rent, and in what not. *Vide Lit. Rep. 58.*

In what Case there shall be a Sus-*Suspended.* pension of Rent. *Ibid.*

Where there shall be no Appor-*Apportionment.* tionment of Rent, *Id. 61.* and how *ed.* the Word *Annuatim* or Yearly shall be taken.

Note, That where two Closes are *Extin-* in the same Possession, the Duty of *guishment.* Fencing is extinguished, and shall not revive, though the Closes come after into several Hands. *1 Vent. 97. Dyer 295. Poph. 172. 1 Cro. Baber & Bereman's Case.*

By Release, &c. If a Lessee assigns over his Term, reserving Rent, it will be extinguished by releasing all Demands. 1 Vent. 314. 1 Mod. 99.

But it was said, That a Rent incident to a Reversion would not be barred by such Release. 1 Vent. 314. 1 Sid. 141.

Also it's said, That a Man cannot release a Debt by his Will. 1 Vent. 39.

Note, That where a Fine is levied to a Lessee for Years, with an Intent that he should suffer a Recovery, his Term is not drowned. 1 Vent. 195.

But if Tenant for Life, with Power to make a Jointure, suffers a Recovery, the Power is extinguished. *Id.* 226.

Demand and Tender of Rent. If the Tenant come to the Landlord at any Place upon the Ground at the Day of Payment, and tender his Rent to the Landlord, it is good enough, and shall save the Condition; and the Landlord is bound to receive it, altho' it were not at the most *notorious* Place, nor last Instant of the Day; for he may tender his Rent at any Time of the Day, although the last Instant be the legal Time of Payment. Co. 1 par. Inst. f. 202.

But

Ch. 3. Landlords and Tenants. 229

But observe by the Way, That a *Tender*.
Tender of Rent must be of the whole
Rent, without Deduction of Taxes
or Assignments, or any other Charges;
for Stoppage is no Payment in
the Law. *Tr. 23. Car. in B.R. Pract.*
Regist. p. 622.

If a Man lets Lands by Lease for *Tender*,
Years to another, reserving Rent of *when*
the Land to be paid at *Michaelmas*
and our *Lady-day*, or within fifteen
Days after, and for Default of Pay-
ment to re-enter; in this Case it is
sufficient and lawful for the Tenant
to tender his Rent the last Hour of
the last Day, if the Money can be
told in that Time before it be dark;
and so it is sufficient for the Land-
lord to demand it the same Hour.
Co. 1 par. Inst. 202.

Altho' the Time of Sun-setting is *Time to de-*
the Time appointed by the Law to *mand Rent*.
demand Rent, to take Advantage of
a Condition of Re-entry, and of ten-
dring Rent to save a Re-entry, and of
tendring Rent to save a Forfeiture;
yet it is due not until Mid-night: For
a Man demands till Sun-set, yet if
if after Sun-set, and before Mid-night,
he dies, his Heirs shall have the Rent,
and not the Executors. Which proves
the Rent is not due until the last Mi-

nute of the Natural Day. *Vide* 1 Saund. 287.

Reservati. A Man seised in Fee ought to re-
on of Rent, serve the Rent upon a Lease to
how. himself and his Heirs; for that it ap-
 pears, if a Man seised in Fee makes
 a Lease for Years, reserving Rent
 to himself and his Assigns, this Rent
 is extinct after the Lessor's Death,
 because it was not reserved to the
 Lessor and his Heirs.

Lease by a Tenant in Fee, and
 Rent reserved to the Lessor, his Exe-
 cutors, Administrators and Assigns;
 the Words Executors and Admini-
 strators are void. 1 Vent. 162.

So if a Man seised in Fee lease
 one Acre of Land, reserving 10 s.
 Rent to him and his Heirs: And also
 lease another Acre reserving other
 10 s. Rent to himself, without saying
 [and to his Heirs] the Heir shall not
 have the last Rent, but it is extinct
 by the Death of the Lessor. 2 Saund.
 268, 269.

Rent trans- But if one seised in Fee reserves a
ferred. Rent upon a Lease for Years *du-*
rante *Termino* to the Lessor, his Exe-
 cutors, Administrators and Assigns,
 and not to his Heirs; yet by a Grant
 of the Reversion from the Lessor,
 the Rent is well transferred to the
 As-

Assignee; and in such Case the Rent being transferred to the Assignee, the Law transfers also to him the Covenant of the Lessee for the Payment of it as incident to the Rent. 2 Saund. 369.

Vide the Case of *Sacheverel versus Frogat.* 2 Lev. 13. where the Rent was reserved to him, his Executors and Assigns, the Heir brought an Action, and upon a Demurrer it was argued for the Defendant, That the Rent determined by the Death of the Lessor: But the Chief Justice said, That the Rent being reserved to him, his Executors and Assigns, would continue and go to the Heir, for the apparent Intent that it should endure after his Death, otherwise it could not go to the Executors, and that without the *durante Termino*. But that 'tis otherwise where the Rent is reserved to him, or to him or his Assigns; and after several Arguments, Judgment was given for the Plaintiff.

Now if a Man makes a Lease for Years reserving Rent generally, and does not say to whom, the Law will make Construction, that it shall be paid during the Time to them who have the Reversion, and to whom from

from Time to Time it shall appertain. 2 Saund. 369.

*Heir not
named.*

Where a Father is seised in Fee, if he and his Son and Heir Apparent by Indenture make a Lease for Years, to commence upon the Death of the Father, rendring Rent to the Son by Name, although the Son be Heir to his Father, he cannot have this Rent as Heir, because the Rent was not reserved to the Heir, and he cannot have it by the Reservation of the Lease, because he was a Stranger to the Land, and had nothing in it at the Time of the Lease made.

2 Saund. 370.

*Reservati-
on how con-
strued.*

If a Lessor seised of a Reversion in Fee, demise the Reversion expectant upon an Estate for Years to a Stranger for Life, reserving Rent when the Reversion shall happen : In such Case he shall have no Rent during the Continuance of the Term for Years ; for a Reservation of Rent shall be construed most strongly against the Lessor himself. 2 Saund. 168, 169.

*Re-entry of
Landlord.*

If a Lease be made with this Proviso, that in Case of Non-payment, the Landlord to re-enter : Here if the Landlord distrain, he may not re-enter, but he may accept of the Rent,

Rent, and yet re-enter; but if he do receive the next Rent again, then he cannot re-enter, for that establiſheth the Lease. Entry into an Acre of Land in the Name of the whole, is a good Entry, if the Land do all lie in one County. 1 *par. Inst. p. 211.*

In a Lease for Years, if the Lesſee *Re-entry.* covenant, That if he or his Executors or Assigns do alien, that then the Lessor shall re-enter, and afterwards he makes his Wife Executrix, and dies; and the Widow marries again, and her second Husband aliens: In this Case the Lessor may re-enter; because the second Husband is Assignee in the Law.

If a Man make a Lease for Term *By Heir.* of Years, yielding to him and to his Heirs a certain Rent, upon Condition, That if the Rent be behind and unpaid by the Space of forty Days after any of the Days of Payment, that then it shall be lawful to the Lessor and his Heirs to re-enter: And after the Rent is behind forty Days, and is demanded by the Lessor, and is not paid, the Lessor dieth, and his Heirs enter; in this Case his Entry is lawful: But if the Lessor had died after the Feast-day, and before the fortieth Day, so that he had not demand-

demanded the Rent, and his Heir had demanded the Rent at the fortieth Day, and for Non-payment he re-enters : In this Case his Re-entry is not lawful. *Dr. & St. l. 1. c. 20. f. 35.*

Limitation to Wife. If a Lease be made to *H.* for one and forty Years, if he live so long ; and if he die within the aforesaid Term, that then the Wife of the aforesaid *H.* shall have it for the Residue of the said Years : This Limitation is void ; for if *H.* die, the Term ends, and his Wife shall have nothing in it. *Dyer 254.*

More Acres pass. If a Man lets all his Meadow in *D.* containing ten Acres ; if there be twenty Acres of it, all passes in this Case. *Dyer f. 80.*

Feoffment by Lessee. If Lessee for Years make a Feoffment, the Lessor being upon the Land when Livery was made ; this is a good Feoffment, the Law adjudging the Lessee in Possession, and Livery ought always to be given of the Possession, and therefore he that hath the Possession must make the Livery. But if the Lessor makes the Livery himself, the Lessee being upon the Land, this Livery is void, because the Lessor cannot give

give Possession when the Lessee is there. *Cro. Eliz.* 321, 322.

It's said, one may give Authority *Livery and* by Parol (or Word of Mouth) unto *Seisin*. another to take Livery or Seisin of Lands for him, and that if such Livery and Seisin be taken accordingly, it is good. *Pract. Reg.* 398.

If a Deed of Feoffment be made *A die* of Land, *Habendum a die datus*, and *Dat. &c.*, the next Day after the Date of the Deed, the Feoffee give Livery and Seisin of his Land, this is a good Livery and Seisin; but that if this Livery and Seisin were made by Attorney, it is said it will operate nothing. *Vide Hob.* 314. *Pract. Reg.* 398.

A Thing that is to take effect *a Die dat'*, is not to take Effect until the next Day after the Deed bears Date; but where it is *Habendum a Dat'*, or *a Confectione Indentura*, there it commenceth presently. *Pract. Reg.* 398. *See after.* 136

A. makes a Lease to B. for Life, *Habendum a Die Confectionis*, and Livery is made by A. himself a Month after, it was held that the Livery was good, it being made by the Feoffor himself. But if it had been by
Letter

Letter of Attorney, such future Livery would operate nothing. *Cro. Jac.* 458.

*Livery
void.*

If a Man make a Lease for Years, and afterwards make a Deed of Feoffment, and delivers Seisin; if the Lessee be upon Part of the Premises, and neither know nor assent to it, yet the Livery is void: For though the Lessor hath the Freehold and Inheritance in him, yet the Possession is in the Lessee; but if the Lessee be absent, and hath neither Wife, Children nor Servants (though he hath Cattle) upon the Ground, the Livery shall be good. *1 par. Inst. f.* 48.

*Commence-
ment of
Leases.*

ante 125

If a Lease be made to hold from the Day of the making, or from the Day of the Date, or from the Date, the Lease shall begin the Day after it is delivered.

A Lease beginning from henceforth, shall be accounted from the Day of the Delivery, and from the making shall be taken inclusive from the Day of the making: The Day of the Delivery must be taken inclusive, and is the first Day of the Term. If from the Day of the Date, or Day of the making, then the Day of the Delivery shall be exclusive; *aliter* if from

Ch. 3. Landlords and Tenants. 137

from the Date, and it is delivered the same Day. 14 *Eliz. Dyer* 307.

If the *Habendum* of a Lease be for *Habendum.*
a Term of one and twenty Years, without mentioning when it shall begin, it shall then begin from the Delivery. So if an Indenture of Lease bear Date upon Days impossible, as *Impossible*
Febr. 30. or March 40. there being no *Date.*
such Days in our Accompt; in this Case, if the Term be limited to begin from the Date, it shall take Effect and Beginning from the Delivery, as if there had been no Date at all. *Co. 1 par. Inst. f. 6. Co. Lit. 46. Hern. L. Con. 15, 131.*

Vide 1 Vent. Rep. 137. That a Lease *Present*
without any Date specified, or an *Comment-*
impossible Date, as from 40 *Septemb.* *ment.*
shall commence presently.

So a Lease made to begin from the End of the Lease misrecited, shall commence presently. 1 *Ven. 83. 1 Lev. Rep. 234.*

A Prebendary made a Lease for Life to hold from the Date, and Livery made the same Day; it was objected, that it ought to commence from the Day of the Date, and so Livery given the same Day was void: But the Court at length held it good,
and

and gave Judgment for the Defendant.

Upon Failure of Issue. A Lease is made to commence after the Death of *J. S.* his Son without Issue, *J. S.* hath Issue and dies, and then the Issue dies without Issue, the Lease commences; for Issue being a Word collective, whenever the Issue fails the Term commences.

One Lease to Day and another next Day. If Lands descend to an Heir, he may make a Lease thereof before his Entry into the same. If a Man makes a Lease to Day to one for ten Years, and to Morrow makes another Lease of the same Lands to another Person for twenty Years; this second Lease shall be good after the first is expired, for so many Years as remaineth therein to come. *Noy's Max. p. 67.*

Upon Surrender, &c. If a Man makes a Lease to another for one and twenty Years, and after another Lease to commence from the End and Expiration of the said Term of Years, and after the first Lease is surrendered; in this Case the second Lease shall commence presently upon the Surrender. *Co. 1 par. Inst. f. 45.*

But if it had been made to commence from the End of the said one and twenty Years, there, tho' there had

had been a Surrender, yet it should not have commenced till the Term had been out; so that by this you may observe, the Law puts a Distinction between a Term of Years and a Time of Years.

And by 3 *Lev.* 284. an Estate *Difference.* vests immediately after a Surrender made, before Acceptance or Agreement; but that it divests by Refusal afterwards.

And so by 2 *Vent.* 199. noted, that it was said, That no Surrender of an Estate can be perfect without Acceptance by the Surrendree. *Thompson versus Leach.*

But that Judgment was afterwards *Present* reversed in Parliament; so that it ap- *vestment.* pears that a Surrender divesteth the Estate immediately before express Assent of the Surrendree. *Id.* 203.

A Lease made to commence after *Present* the End of another, and there is none, *Commence-* it shall commence presently. *ment.*

If a Man lets Lands to another, *Incertain-* to hold till the Lessee hath levied *ty.* Twenty Pounds; this is a good Lease, notwithstanding the Incertainty.

Bratton saith, That every Lease *Commence-* must have a certain Beginning and *ment and* Ending; *Quia id certum est quod cer-* *Determi-* *nation.* *tum*

tum reddi protest. Yet you see by the Case before, this Rule is contradicted, so that it holds not always, although in the Generality it doth

Upon Nomination

For if a Man make a Lease to another for so many Years as *I. S.* shall name, although this be uncertain at the Beginning, yet when *I. S.* hath named the Years, it is then good for so many Years as he names.

Upon Payment.

So likewise, if *A.* be seised of Lands in Fee, and do grant to *B.* that when he pays him Twenty Shillings, that then from that Time he shall have and occupy the Land for One and Twenty Years; and after *B.* pays unto *A.* the Twenty Shillings; this is a good Lease for One and Twenty Years from that Time. *Co. 6 l. fo. 34, 35. Co. 1 par. Inst. fo. 45.*

Of Glebe.

If a Parson make a Lease of his Glebe for so many Years as he shall be Parson there, this is void, because of the Uncertainty thereof; for the Parson's Time there terminates with his Life, than which nothing is more uncertain.

Death.

If a Lease be made for One hundred Years, if *A.* and *B.* live so long; in

Ch. 3. Landlords and Tenants. 141

in this Case, if either of them die, the Lease is ended.

If an Infant, who is seised of *Infant.* Lands in Socage, make a Lease at his Age of Fifteen Years; this is good, and shall bind him. *Co. 1 par. Inst. fo. 45.*

If a Tenant in Fee marry a Wife, *Avoided* and make a Lease of his Lands for *by Wife* Years, and after die, and the Wife is thereof endowed; here she shall avoid the Lease, but after her Death it shall be in Force again against the Heir. *Co. 1 par. Inst. fo. 46.*

If a Man have a Term of Years in the Right of his Wife; if she die, it remains to him; but if she survive him, it remains to her, and not to his Executors, without he dispose of it in his Life-time. *Co. l. 8. fo. 49.*

If a Man license another to enter *Licence.* and occupy his Lands, this is a good Lease for Years in Law. *Browl. 2 part. p. 250.*

A Lease for Years, although it be *Long Lease.* never so long, cannot be entailed, because it is a Chattel which cannot be turned into an Inheritance. *Style Pract. Regist. p. 197.*

If

For Life. If a Man seised in Fee-Simple let a Lease to another, to have and to hold the same Lands for Term of Life, and do not mention whose Life, it shall be taken for the Lessee's Life; because the Act of every one shall be taken most strongly against himself.

But if a Tenant in Tail let such a Lease without expressing whose Life, it shall be taken for the Life of the Lessor.

By Joint-Tenants.

If a Joint-Tenant make a Lease for Years of his Part, though the Lessee never had Possession, or tho' it be to begin at a Day to come, and the Joint-Tenant that made it die before the Day, yet the Survivor shall be bound by the Lease, for the Lessee hath a present Interest. *Co. 1 par. Inst. fol. 185. non satis*

Partition.

If two take a Lease for their Lives, and make Partition, either of them dying, his Part immediately reverts to the Lessor.

Joint-Tenants.

If there be two Joint-Tenants for Life, and one of them makes a Lease for Eighty Years, to begin after his Death, and after dies, this Lease is good against the Survivor. *Goldf. Rep. 187.*

Ch. 3. Landlords and Tenants. 143

If a Lease be made to the Husband *How a* and the Wife, yielding a greater *great Rent* Rent than the Land is worth, if the *may be avoided.* Husband die, the Wife, after the Husband's Death, may refuse the Lease, to save her from the Payment of the Rent: But if the Husband over-live the Wife, and then make his Executors, and dies; if they have Assets, that is, if they have Goods sufficient of their Testator to pay the Rent, they cannot refuse it: But if they have no Goods sufficient of their Testator to pay the Rent to the End of the Term, if they relinquish the Occupation, they may by special Pleading discharge themselves of the Rent and the Lease.
Dr. & St. l. 2. c. 33.

If a Man makes a Lease for Years, *Lease re-* and afterwards the Lessor enters up-*vived.* on the Land let before the Term is expired or determined, and doth make a Lease of these Lands to another; this second Lease, it's said, is a good Lease until the first Lessee doth re-enter, and then the first Lease is revived, and the first Lessee is again in Possession by Ver- tue of the first Lease. *Pract. Reg.*
403.

Where

Present Possession.

Where a Lease for Years is made by the Words, Demise, Grant, and to Farm let, the Lessee is not in Possession so as to bring Trespass, &c. until an actual Entry. But where the Words, Bargain and Sell, (for a Consideration of Money) are in, although but for a Shilling, the Party is in Possession presently upon executing the Deed so as to bring Trespass, &c. *Ibid.*

Mines, &c. reserved.

If I let Lands in which are Mines, or Trees, I cannot enter to take the Trees or Mines, but am a Trespasser, unless I do reserve such a Privilege to my self when I let the Lands.

But if a Lessor do come upon the Ground leased, he is no Trespasser, for it shall be intended that he came to see if Waste were done.

Mines.

It is noted, That if a Man opens a Mine in his own Land, he may dig and follow the Vein under another Man's Ground; but if the Owner dig there also, he may stop his further Progress. 2 *Vent.* 342.

Concerning Leases and Grants made of the Dutchy of Cornwall, *Vide Stat. 6 Anna, cap. 25.*

Lease lost.

If a Tenant for Years happen by any Casualty to lose his Lease, yet he shall

shall not lose his Term in the Lands let by such Lease which is lost, if it can be proved that there was such a Term let to him by Indenture, and that it is not determined.

Where by an Order confirmed by *Cancelling Indenture.* Act of Parliament, That an Indenture shall be vacated and cancelled, 'tis not intended that the Indenture shall be void *ipso Facto*, but that it shall be made void by Cancelling of it, and until the Cancelling the Estate granted by the Indenture continues. 1 *Saund.* 201.

An insensible Clause does not make the Residue of a Deed vitious, which is sensible of it self. 1 *Saund.* Rep. 320.

All Feoffments, Gifts, Grants and *Duress.* Leases made by Duress of Imprisonment are voidable, and that not only by the Parties themselves, but by their Heirs and those who have their Estates. *Perk. Sect. 16. Co. on Lit. f. 253. b.*

If a Lay-Man who is unlearned, *Reading* and cannot read, be bound to seal a *the Deed.* Lease, Bond, or other Writing to another; in this Case he need not do it, without there be some there to read them to him, if he request it and in such Language as he understands:

H

stands:

stands: And if it be read amiss to him, or declared contrary to what it is, so as the illiterate Man is thereby deceived; as a Bond of twenty Pounds is read as of twenty Shillings; or a Feoffment of two Acres is read as of one; in such Case he may very well plead, that it is not his Deed; but if he request not to have the Writing read, though it be contrary to his Intent and Meaning, yet it shall bind him if he seal and deliver it, for it was his Folly that he did not desire to have it read. Co. 2 Rep. f. 3. &c.

Where and how Rent ought to be demanded to take Advantage of a Re entry for Nonpayments. Where one makes a Lease rendering Rent to be paid at a Place off from the Land, a Demand on the Land is not sufficient, but it must be made at the Place appointed. Trin. 5 Jac. C. B. *Ventris's* and *Farmer's* Case. 1 Brownl. 96.

ante 122 The Demand ought to be at the setting of the Sun on the Day of Payment, and at the most notorious Place. Pasch. 5 Jac. C. B. The Dean and Chapter of *Chichester's* Case. 1 Brownl. 138.

If the Lessor would take Advantage of a Re-entry for Non-payment of Rent, he or the Person he empowers to demand it for him, must

must take care not to demand a Penny more or less than is due, and must shew the Certainty of his Rent, and when it was due, or the Demand is not good, and no Re-entry shall be given unless the Demand be precisely and strictly followed. *Mich. 31. Eliz. C. B. Falcon & Windsor. Leon. 35.*

Where a Lease is made of Lands at Will rendring Rent, the Lessee cannot determine his Will two or three Days before the Rent is payable, and so defraud the Lessor of his Rent, any more than the Law will allow the Lessor to determine his Will, after the Lands are sown; but as the one shall have the Emblements, the other shall have his Rent: So that the Lessee cannot determine his Will but at the Rent-Day, unless he pays Rent until the next Day of Payment after his Departure. *Siderfin 369.*

Where a Tenant is held by Force out of his Farm or Tenement by Soldiers in Time of a Rebellion, a Court of Equity cannot relieve him, but he must pay his Rent: So where his Grounds are overflow'd that he can receive no Profit by them, he must pay his Rent notwithstanding.

Lessee at Will cannot determine his Will without paying his Rent.

Tenant must pay his Rent who kept out of his House by an Enemy, and Equity cannot relieve him.

nor can he be relieved in Equity :
Sir John Harrison against the Lord
North. Pasch 19 Car. 2. Chanc. Cases
1 part p. 83.

*Lessor once
 accepting
 Rent can-
 not take
 Advan-
 tage of a
 Re-ent.y.*

A Lease was made with a Con-
 dition of Re-entry for Non-Pay-
 ment of Rent, the Lessee paid his
 Rent to the Lessor who accepted it
 and put it up; but afterwards finding
 bad Money amongst it, he refused to
 carry it away, and entred for the
 Condition broken. It was adjudg'd
 that this Entry was unlawful, for
 his having once accepted the Rent,
 bars him from taking any Advan-
 tage. *Wade's Case. Trin. 43 Eliz.*
C. B. Rot. 406.

*Where the
 Lessor shall
 enter for
 Waste done,
 and where
 not.*

If a Lease be made upon Condi-
 tion that the Lessee shall do no Waste,
 and he does commit Waste; if the
 Lessor afterwards, accepts the Rent,
 he cannot enter: But if the Condi-
 tion had been, if he committed Waste,
 that then his Estate should cease,
 there no Acceptance of the Rent
 could make the Lease good. *Mich.*
29. Eliz. B. R. Godb. 47.

*Assignee
 who has
 assign'd o-
 ver, not
 chargeable
 with the
 Rent.*

Covenant for Rent was brought
 against the Assignee of a Term for
 Rent due after the Assignee had as-
 sign'd that Term over to another,
 he not having given the Lessor any
 Notice

Notice of his Assignment; and resolv'd by the whole Court that Notice was not necessary. *Pitcher v. Tovey Mich. 3 W. & M. B. R. Show. 340.*

A Lease was made of Lands in ^{Covenant} Ireland, with a Covenant for Pay-^{will not}ment of the Rent in *London*: And it ^{lie in Eng-}was resolv'd that an Action of Co-^{land for}venant cannot be brought in *England* ^{Rent of}for Rent reserv'd on a Lease of ^{Lands in}Ireland, ^{tho' made}Lands in *Ireland*. *Barker v. Damer. Hill. 2 W. & M. B. R. Show. 191.* ^{payable}
Salk. 80. ^{here.}

The Words *Yeilding and Paying* are an exprefs Covenant for Payment of Rent. 1 *Siderf. 266.*

In Debt for Rent upon a Lease at Will, the Plaintiff must shew the Defendant occupied the Premises; ^{On a Lease at Will the Plaintiff must shew the Defendant occupied the Premises.} for the Rent is due only in respect of the Occupation, and therefore it must appear to the Court when the Lessee entred, and how long he occupied: But in Debt for Rent upon a Lease for Years, the Plaintiff need not set forth any Entry or Occupation, for if the Defendant nei-^{Otherwise on a Lease for Years.}ther enters nor occupies, he must pay the Rent, it being due by the Lease or Contract, and not by the Occupation. *Bellasis v. Burbrick. Mich. 8 W. 3. C. B. Salk. 209.*

Proof of actual Entry not necessary in Ejectment. In Ejectment, on a Condition of Re-entry for Non-payment of Rent, the Confession of Lease, Entry and Ouster is sufficient, and Proof of actual Entry and Ouster is not necessary. *Little v. Heaton. Salk. 259.*

C H A P.

C H A P. IV.

Of Corn sown, who shall have the Crop. Of Estovers, and Trees blown down. Of Distresses: What Things may be distrained, and how used: Who may take a Distress; for what Cause, when, and where.

IT is an usual Saying and generally received Opinion, That he that sows must reap: but as there is no general Rule without some Exception: so this holds not always, That he that sows shall reap.

But touching the Sowing of Corn; *Sowing and Reaping.* if the Tenant be outed, or his Term ends before it be ripe, who shall have the Corn I have already set down in the first Chapter, under the Title of *Tenant at Will*: For if a Tenant at Will sow his Land, and the Landlord put him out before the Corn be ripe, he shall have Liberty to reap and carry away his Corn, *By Tenant.* because he knew not when his Landlord would put him out.

By Land-
lord.

But it is contrary with a Tenant who hath a Lease for Years : For if his Lease be out before the Corn be ripe, his Landlord shall have it, because he knew the End of his Lease : Wherefore if he sowed, it is in his own Wrong, unless there be a Covenant in his Lease between the Lessor and him, that he shall have his Way-going Crop. *Vide antea,*

Hemp or
Flax, &c.

But if a Tenant at Will set Roots, or sow Hemp or Flax, or any thing that brings in any yearly Profit ; if after the Planting the Lessor out him, or if the Lessor die, yet the Tenant or his Executors shall have the Crop. But it is otherwise if he plant young Fruit-Trees, or other young Trees, as Oaks, Ashes, or Elms, or sow the Ground with Acorns ; in this Case, if the Lessor out him, he shall have none of these because these yield no yearly Profit at present.

Where an Action lies against such as hinder taking away his Emblements, as Corn growing, Grass, Fruit of Trees, Hemp, Flax, &c. *Co. Lit. 56.*

Keilw. 125, 160.

Executors.

If a Tenant for Life soweth the Ground, and die before the Crop be ripe, his Executors shall have it,
and

Ch. 4. Landlords and Tenants. 153

and so they shall have Grasse if it be cut; but if it be *unmown*, they shall not have it, for that is Part of the Inheritance till it be severed.

Every Tenant that hath an Estate incertain, shall have the Corn sown by him, though he be outed before it be ripe. *What Tenant.*

If the Lessee sow the Land, and then surrender his Term, the Lessor, or he to whom the Surrender is made, shall have the Corn; so if a Man enter for Condition broken, he shall have the Corn, and not he that soweth the Corn, for his Entry over-reacheth the Estate of the other. *Where Lessor shall have the Corn.* *Godb. Rep. 189.*

If a Lessee for Years sow the Land, and then commits Waste, and the Lessor recovers the Land in an Action of Waste; here the Lessor shall have the Corn sowed. *Similes.* *Perk. Sect. 515. Cowell's Inst. 152.*

If Tenant for Life lease for Years, and the Lessee sows the Ground, and before it be ripe the Tenant for Life dies; yet notwithstanding the Lessee for Years shall have the Corn, or his Executors if he be dead. *Where Lessee shall.* *Co. Lit. 55. b.*

Tenant for Life, Remainder in Fee, Tenant for Life leaseth for Years; the Lessee is ousted by a

H 5 Stranger.

Stranger, and the Stranger sows the Land, and the Tenant for Life dies: In this Case it was resolved, That the Corn of Right belonged to the Lessee of Tenant for Life, and not to the Stranger, nor him in Remainder. *Goldsf. Rep. 143. pl. 60. 5 Co. 85.*

He that manured.

If *A.* lease Land for the Life of *B.* and sow the Land, and before the Corn be ripe *B.* dies, yet notwithstanding *A.* shall have the Corn, for his Estate was determined by the Act of God; and the Reason why a Man which hath an uncertain Estate shall have the Corn, is, for that he hath manured the Land; and therefore it is Reason, that he that laboureth should reap the Fruits

Simile.

of his Labour: Therefore if a Man make a Lease for Life of Ground sowed, and before Severance the Lessee dies; in this Case the Lessor shall have the Corn, and not the Executor of the Lessee for Life, for the Corn came not of the Manurance of their Testator. And if Lessee for Life sow the Land, and then assign over his Interest, and dies before the Corn be severed; here he in Reversion shall have the Corn, and not the Assignee of the Lessee for Life.

Reversioner.

Goldsf. Rep. 144.

If

Ch. 4. Landlords and Tenants. 155

If a Man by his Will devise Lands ^{Remain-} sowed to one for Life, and after his ^{der Man,} Decease the Remainder to another for Life, and the first Tenant enters and dies before Severance, and he in Remainder enters; now he shall have the Corn, and not the Executors of the first Tenant for Life. *Goldf. Rep.* 144.

If a Man be seised of Land in ^{Wife,} Right of his Wife, and sow the Land, and die, his Executors shall have the Corn; but if they be Joint-Tenants of Lands and the Husband soweth the Ground and dieth, the Wife shall then have it. *Co. on Lit. f. 55. b. Perkin's Sect. 518. Dyer* 316.

And if a Woman who is a Tenant for Life or in Dower, take an Husband, and he sow the Land, and before it be ripe she dies, yet the Husband shall have the Corn. *Cowell's Inst.* 141. *Swinb. Sect. 6. p. 163.*

And so if the Husband let the ^{Lessee's Se-} Lands of his Wife for Years, and the ^{neff.} Lessee sows the Lands, and before Severance the Wife dies, yet the Lessee shall have the Corn, or his Executors, if he be dead. The like Law of Lessee for Years of Tenant by the Courtesie, when Tenant by the

the Courtesie dies before his Lessee's Corn is ripe and severed. *Cowell's Inst. p. 141.*

Lessor's Benefit. If a Woman who holds Lands *Durante viduitate sua* sow the Ground, and then takes Husband before the Corn be severed; in this Case the Lessor shall have the Corn. And so if Tenant at Will sow the Land, and then will occupy the Land no longer, he shall then lose the Corn; and the Reason hereof is, because the Determination of their Estates grew by their own Act. *Co. on Lit. 55. b. 5 Co. Rep. 116.*

Lessee's Benefit. But if such a Woman who holds Land *Durante viduitate sua*, lease the same Lands to another, and the Lessee sows the Land, and then the Woman takes Husband, which determines her Estate, yet notwithstanding the Lessee shall have the Corn. So if Tenant for Life lease for Years, and the Lessee sows the Lands, then Tenant for Life commits a Forfeiture, so that his Lessor enters, yet the Lessee of Tenant for Life shall have the Corn; but if Tenant for Life sows the Lands, and then commits a Forfeiture, and the Lessor enters, here he shall have the Corn, **Contra.** and not Tenant for Life, because the De-

Ch. 4. Landlords and Tenants. 157

Determination of his Estate grew by his own Act. *Goldsf. Rep.* 189.

A Lease made by the Husband of the Wife's Land in his own Name only is void after his Death; but if the Lessee have sown the Land, he shall have the Corn, *Noy's Max.* 70.

If there be a Landlord and Tenant, and the Land is recovered by a Title Paramount against the Landlord; in this Case, if the Tenant have sowed the Land, he that recovered shall have the Corn, if it be not severed before Judgment; but if a Common Recovery be had against the Landlord in a Writ of Entry *en le post*, or in any other Writ by a false and feigned Title, in such case the Lessee shall have the Corn. *Co. on Lit.* 142. *Perkins Sect.* 515.

If an Abator, after the Death of the Ancestor, enter and sow the Land, and after the right Heir doth enter; in this Case the Heir shall have the Corn. So if a Disseisor sow the Land, and then the Disseisee entreth upon him, or recovereth in an Assize before the Corn be severed; in this Case the Disseisee shall have the Corn; but if it were severed before the Entry or
Reco-

Where Dis- Recovery, though it remain still up-
seisor. on the Land in Sheaves or Cocks,
 there the Disseisor shall have it. But
 it is otherwise in the Case of Trees
 severed from the Land; for if they
 be not carried off the Land before
 the Disseisor's Entry, he shall then
 have them. *Goldf. Rep.* 144. *Perk.*
Señt. 519.

Widow. If a Widow have Land assigned to
 her by the Sheriff for her Dower,
 and this Land is sowed with Corn;
 here she shall have the Corn. *Vide*
Perk. Señt. 521. 15 *Eliz.* *Dyer* 319.

Her Execu- Note, That the Statute of Merton;
tors. ch. 2. which giveth. *Quod omnes Vi-*
dua de cætero possint legare blada, &c.
 as unto this Point, is but in Affir-
 mance of the Common Law; for if
 Tenant in Dower soweth the Land
 which she holdeth in Dower, and
 dieth before Severance, her Execu-
 tors shall have the Corn if she do
 not devise it to another; and so was
 the Law taken in the 4th of *H. 3.*
Devise 6. which was sixteen Years
 before the Making of the Statute
 of Merton. *Perk. Señt.* 522. *C. 2 part.*
Inst. 83.

Executors. If Tenant in Tail sow the Land,
 and give me the Corn, and die before
 I have severed it from the Land,
 yet

Ch. 4. Landlords and Tenants. 159

yet I may afterwards sever the same and take it; for that the Executors of the Tenant in Tail should have had it. *Perk. Sect. 59.*

But if Tenant in Tail give or sell ^{Trees cut by} to me a Tree growing upon the ^{Tenant in} Land, and dies before I have the ^{Tail.} Tree, and his Issue entrench into the Land where the Tree is growing, now I cannot cut the Tree but he may have Trespass against me: But it seems, if it were cut in his Lifetime, I may then take it away after his Death. But *Quære* of this; for some are now of a contrary Opinion, *Kitch. 226. a. b. 27 H. 8. fo. 6. P. 18 E. 4. fo. 6. a. and Hill. 18 E. 4. fo. 21.* in the End. *Perk. Sect. 58.*

If Tenant in Fee-Simple give or ^{Trees.} sell me a Tree growing upon his Land, and die before I have cut it, yet I may have it after his Death if I please. *Perk. Sect. 58.*

There are Three Kinds of ^{Estovers.} *Estovers* in the Law, which is incident to the Estate of every Tenant, whether it be for Life or Years.

1 *House-boot*, of which there are two Kinds; the one to repair the Houses, the other to burn, which is called *Fire-boot*.

2. Then

2. Then there is *Estovers*, called *Plough-boot*; that is, Stuff to mend the Tenants Ploughs, Carts, Harrows, Wains, and for making Rakes and Forks for getting in his Hay and Corn.

3. There is another Kind of *Estovers* called *Hedge-boot* or *Hay-boot*; this is Timber and Wood for making Gates and Stiles, and Boughs and Bushes for mending and repairing Hedges and Fences.

1. So there is *Estoverium edificandi & ardendi*, House-boot.

2. *Estoverium arandi*, or Plough-boot.

3. *Estoverium Claudendi*, Hedge-boot or Hay-boot.

*Definition
of Estovers.*

Estover or *Boot* signifies an Allowance, Compensation or Satisfaction; and any of all these Boots aforementioned a Tenant may take without Assignment of the Landlord, unless he be by the Landlord restrained by special Covenant in his Lease, which is very usual amongst many Landlords, especially if the Farm be any Thing considerable, then they commonly limit the Tenant how much *House-boot* or *Plough-boot*,

boot, or Hedge-boot, he may take without Assignment, and how much by Assignment. *Vide 2 Co. Inst. fo. 18. Termes de la Ley, &c.*

If a Tenant for Life or Years cut ^{Trees cut} down Trees, or pull down Houses, ^{by Tenants} or suffer them to fall down, the Les-^{for Life.}see shall have the Trees and Timber of the said Houses; for the Lessee had them only as Things annexed to the Land, and this Severance will not give him a greater Estate in them, but his Interest is then determined. *Co. l. 4. 31, 62, &c.*

The Landlord shall likewise have ^{Windfalls.} Windfalls; that is, Timber-Trees blown down by Wind and Tempest, because they are Parcel of his Inheritance, so that the Tenant for Life nor Years cannot have them, unless it be to build withal, where Houses are in Decay; but if they be Dotards or Pollards without Timber, which bear neither Leaves nor Fruit in Summer, the Tenant shall have such when they are blown down. *Dyer 332.*

Esfovers granted to be burnt in ^{Esfovers.} such a House, shall go to him that hath the House by whatsoever Title: for one is inseparably incident to the other.

other. *Finch l. 1. c. 3. p. 15. 1 Perk. Sect. 104. Kitchen 51. a.*

What Property.

Lessee for Life or Years, Tenant in Dower, or by the Courtesie, or Tenant in Tail after the Possibility, &c. have only a special Interest or Propriety in the Trees, as Things annexed to the Lands, so long as they are annexed thereunto; but if they or any other sever the Trees from the Land, then their Interest is determined and the Lessor may take the Trees as Things that are Parcel of his Inheritance, the Interest of the Lessee being determined. *4 Co. Rep. f. 62. Noy's Max. 65.*

Trees cut by Stranger.

If a Stranger cut down a Tree, growing upon the Land of the Lessee for Years, and carry it or the Bark thereof away; the Lessor at his Election may either have an Action of Trover against the Stranger, or an Action of Waste against the Lessee; for the Property of the Timber is always in the Lessor, *non obstante* the Statute of Gloucester which gives him his Action of Waste, and so was the Opinion of Jones, Whitlock, and Richardson, *Hill. 7 Car. 1. in B. R. Berry and Reed's Case, Cro. Rep. 4 par.*

If one hath Estovers in certain in Ten Acres of Wood, and five of them descend to him, he shall have the Whole out of the Residue. *Critica Juris Ingeniosa*, p. 123.

If a Man grant to another Estovers in certain in such a Wood, and afterwards the Grantor makes such Waste in the Wood, as that there is not sufficient Store left, out of which the Grantee may take his Estovers; in this Case he may have a *Quo Minus* against the Grantor, which is in Nature of a Prohibition, forbidding him to make such Waste. See after concerning Waste.

Concerning Distresses, Replevin, and Avowry, &c.

Distress is a Law of Cuslom; that Distress by is, if Rent be in Arrear and unpaid, Custom. the Landlord may take a lawful Distress; and that he shall put in Pound Overt, there to remain until he be satisfied of what he distrained for.

So that if a Landlord distrain the Pound Cattle for Rent, and put them in Overra, a Pound Overt, and the Beasts die there for lack of Meat, it is at the Peril of him that owned the Beasts,

Beasts, and not of him that distrained: For in him that distrained, there can be assigned no Default, but the Default was in the other, because the Rent was unpaid. *Dr. & St. l. 1. c. 5. p. 10.*

of what. Now a Distress must be made of such a Thing, wherein some Body hath a certain and valuable Property; therefore such Things as are *Fera Naturæ*, cannot be distrained; neither can any one distrain a Horse if any Body be on the Back of him; nor any Thing which a Man holds in his Hand, or carrieth about him, annexed to his Body.

General Rule.

And altho' the Law be, That the Landlord may distrain any Thing that he finds *Levant* or *Couchant* upon the Premises for his Rent behind, whose Goods or Chattels soever it be, and may detain the same until his Rent be satisfied; yet this General Rule hath some Restriction and Limitation, for there are several Things whereof a Distress cannot be taken.

What cannot be distrained for Rent.

Such Things as are for the Maintenance and Benefit of Trade, cannot be distrained for Rent; as an Horse in a Smith's Shop, nor an Horse in an Inn cannot be distrained for

Ch. 4. Landlords and Tenants. 165

for the Rent thereof; nor the Materials in a *Weaver's Shop*, nor the Making of Cloth, nor Cloth or Garments in a *Taylor's Shop*, nor Sacks of Corn, nor Meal in a Mill for the Rent thereof; nor any Thing that the Tenant hath distrained for *Damage fasant*, for that is in the Custody of the Law. *Noy's Max.* 124. *Terms of the Law, Tir Distress.*

Likewise Oxen of the Plough may *Oxen*. not be distrained; nor a Mill-stone, though it be raised to be picked, so long as it lies upon the other Stone. *Co. Lit. f.* 47.

Neither may a Distress be taken of *sheep*. *Sheep*, if there be a sufficient Distress besides.

Neither can a Man sever Hor- *Horses*. ses joined together, or to a Cart; *1 Vent.* 36. but he ought to have distrained Cart and all, according to *20 Ed.* 4. 3.

Likewise Victuals, nor Sheafs or Shocks of Corn, cannot be distrained: But Carts or Wagons loaded with Corn may be distrained, either for Rent or *Damage fasant*. *Co. Ibid.* But see afterwards the late Act made for Distresses.

A Distress of a Cart loaden with *Cart and* Corn and four Horses to it, was *Horses*. ad-

adjudged not to be excessive, because he could not sever the Horses. *Vide* 3 Cro. 7. 2 Vent. 183.

Tools fixed. No Man's Tools wherewith he works at his Trade shall be distrain'd, as the Carpenter's Ax, or a Scholar's Books, &c. *Coke, Ibid.*

Things fixed.

Neither can any Thing which is fixed to the Freehold be distrained, as Furnaces, Coppers, or Fats fixed for Dyers or Brewers, (although the Tenant may remove them during the Term) nor the Windows or Doors of a House while they are upon the Hinges. But if they be removed off from the Hinges, they may be distrained.

Tables.

The Landlord cannot distrain Tables dormant in the House of his Tenant, or any Thing which cannot be attached in an Affize; neither can any Thing be distrained, of which the Sheriff cannot make a Replevin, or that cannot be restored again in as good a Condition as it was when it was distrained.

Strangers Beasts.

But a Man may distrain the Beasts of a Stranger (that come by Escape) for Rent, though they have not been *Levant* and *Couchant* upon the Ground, according to *Coke, 1. part Inst. f. 47.*

Ch. 4. Landlords and Tenants. 167

The Lord of a *Leet* may sell a *Di-Lord* of a distress taken for an *Amerciament* in *Leet*. his *Leet*, as the King may sell a *Di-* distress, because it is the King's Court.

But it is noted, That a Court-*Leet* can amerce for nothing but only publick Nufances, and not for particular Trespass or Damage to the Lord, or any other. *Vide 1 Saund. 135.*

And see *1 Vent. 105. Raym. 204.* That although by common Right a Distress may be taken for a Fine in the Court-*Leet*; that is, where it is imposed for such Things as are of common Right incident to its Jurisdiction, as for Contempts and the like; yet where Custom only enables them to set a Fine, it cannot be distrained for, without a Custom so to do.

That for *Amerciaments* in a *Leet*, For *Amer-* the Lord may distrain, although it be *ciaments*. in the Highway; but for *Amerciaments* in a Court-*Baron* he may not, neither for an *Amerciament* in a *Leet*, in a Place seized into the King's Hands for the King's Debt. *Vide DeEt. & Stud. l. 2. c. 9.*

If a Man distrain Goods or Chat-*Goods*. tels, he may put them where he will, either in a *Pound Covert* or *Overt*: But if they take any Harm, he must answer

answer for them. *Dr. & St. l. 2. c. 27.*
But see after.

Cattle.

If they be living Cattle, they ought to be put in a common Pound, or else in some open Place, as in his own Yard or Close that distrained them, or in some other's by his Consent; so that the Owner may come lawfully to feed them: And the Owner of the Cattle must have Notice where they are, if they be not in a common Pound; and then if they die for want of Meat, it is the Owner's Fault (as it is said before) but if they be in a Pound Covert, or out of the County, and die for want of Meat, then he that distrained them shall make Satisfaction for them.

Pound Covert.

Cattle taken *Damage fasant*, may be impounded in the same Pound where they are *Damage fasant*; but Goods or Cattle taken for other Thing may not. *Kitchin, f. 207.*
But see after.

Within the County, &c.

No Man ought to drive a Distress out of the County where it is taken, nor out of the Hundred, but to a Pound *Overt* within three Miles; neither may a Distress be impounded in several Places; nor above four Pence taken for the Fees of impound-

ing one whole Distress, on Pain of five Pounds. Co. 1 par. Inst. p. 57. *Rastal Tit. Distress, 11.*

If a Man distrain Beasts *Damage fasant*, and put them in the Pound *Overt* within the same County, not above three Miles out of the Hun-^{Within} dred; and the Owner suffer the ^{three} Beasts to die for lack of Meat, the ^{Miles, &c.} Loss is his own, and he that distrained them may be at Liberty to bring his Action for the Trespass, if he will; and if it be not a lawful Pound, then it is at the Peril of him that distrained them; and so it is if he drive them out of the Shire, and they die there. *Dr. & St. l. 1. c. 27.*

If the Owner of the Cattle tender ^{Amends} Amends to him that distrained, and ^{tender'd.} he refuse it, yet the Owner may not take his Cattle out of the Pound, for he may not be his own Judge, and if he do, a Writ *De Parco fracto* for breaking the Pound lieth against him: But he must sue a *Replevin* to have his Cattle delivered him out of the Pound, and afterwards plead his Tender of Amends, of which the Jury must end the Controversy. Also the Owner must look to give them Meat. *Ibid.*

Replevin.

But if the Owner of the Cattle procure a *Replevin* to deliver them, and he that distrained them resist it, and will not deliver them; in this Case, if they die after for want of Meat, it is at the Peril of him that distrained, and the Owner shall recover Damages against him in an Action upon the Statute for not obeying the King's Writ. *Ibid.*

*Parco
fracto.*

If a Man sends his Seryant to take a Distress for Rent or Service, who puts it in the Pound; if the Owner of the Beasts or a Stranger take them out, the Master shall have an Action *De Parco fracto* for breaking of the Pound.

*In another's
Close.*

And if one distrain Cattle, and pound them in another Man's Close with his Consent, and the Owner of the Cattle come and take them out; in this Case he that made the Distress shall have this Action for Pound-breach, and the Owner of the Close an Action of Trespass for breaking of his Close.

If a Man break the Pound and take out my Goods, he that distrained may have a *Parco fracto* against the Party; and may also take the Goods again wheresoever he finds them,

Ch. 4. Landlords and Tenants. 171

them, and put them in the Pound again. *Co. Lit. f. 47. b. &c.*

A Man distrained for Ten Pounds *Two Di-* due at *Michaelmas* for Rent, Goods *stress.* which were not of the Value of Forty Shillings, and afterwards distrained for the Residue, and it was adjudged that he could not avow, for the Distress is not good, and it was his Folly that would not take a sufficient Distress at first: But if a Man be behind of his Rent at several Days, and the Lessor take a Distress for one Day at one Time, and for another Day at another Time, this is good. *Moor's Rep. pl. 26.* But see after, *Stat. 17. Car. 2.* and see the late Act.

If the Lord distrain the Cattle *if by the* of his Tenant, although nothing be *Lord.* behind, the Tenant for the Respect and Duty which he owed to the Lord, and which belonged to him, shall not have an Action of Trespass against him *Vi & Armis*: But if the Lord command his Bailiff in such Case to distrain where nothing is behind, the Tenant shall have an Action of Trespass *Vi & Armis* against the Bailiff. *Hugh's Grand Abridgment, 1 Par. p. 311. c. 7. Co. 4 Rep. f. 11.*

If there be Lord and Tenant by Rent or other Service, if the Rent be behind, the Lord may enter into the Tenant's House, if the Door be open, and distrain for the Rent or Service, notwithstanding that the Tenant holdeth Lands in which he may distrain. 38 H. 6. 28. Co. 5 Rep. f. 92. But a Lord cannot break open the Gates, or break down Fences and Inclosures to make a Distress. Co. Lit. 161. a.

*For a Rent-
Charge.*

If a Man seised of Lands in Fee maketh a Lease for Life thereof, and afterwards he granteth a Rent-Charge; though the Grantee cannot distrain the Cattle of a Stranger who is in Possession of the Land for the Rent, yet if the Grantor's Cattle come upon the Land, he may then distrain them for the Rent. *Brownl. 1 par. f. 32.*

*Excessive
Distress.*

Note, The Statute of *Marlebridge, Chap. 4.* forbids the Lord to take excessive Distresses upon his Tenant for Rent or Services, on Pain of being grievously amerced. As for Example, If the Lord distrain two or three Oxen for Twelve-pence, or the like small Sum, and the Owner bring a Replevy of the Oxen, and then the Lord avow the taking of them

them for Twelve-pence; here of his own shewing he shall make Fine, &c. or the Party grieved may have his Action upon the Statute. *F. N. B.* 89. 8 *H. 4.* 16. 11 *H. 4.* 2. *Regist.* 97. *Co. 2 par. Inst. f.* 107.

But if the Lord distrain an Ox or an Horse for a Penny, if there were no other Distress upon the Land holden, then this Distress is not excessive; but if there were a Swine or Calf, &c. then the taking of the Ox or Horse is excessive, because he might have taken a Beast of less Value. 2 *Co. Inst. f.* 107.

Yet an Information lies not against No Infor- a Landlord for making excessive Di- mation lies stress of Tenants, because he ought to be amerced by the Statute of *Marlebridge, c. 4.* Whereas upon an Information he must of Necessity be fined. 1 *Vent.* 104. 2 *Inst.* 107. *Raym.* 193, 205. 1 *Mod.* 71, 288.

There be certain Cases where a Of Common Man may distrain of common Right, Right. and where not of common Right: A Man may distrain for Rent-Ser- vice, Homage, Fealty, Escuage, Suit of Court, or for Rent reserved upon a Gift in Tail, Lease for Life, Years, or at Will, though there be no Clause of Distress in the Lease; because

these Distresses are of common Right.
Co. 1 par. Inst. f. 204, 205.

*Services
incertain.*

But for Debt, Accompt, Trespafs, or for Reparations, or the like, a Man cannot distrain, neither can any Distress be taken for any Services which are not certain, nor can be reduced, or brought into any Certainty. And upon an Avowry, Damages cannot be recovered for that which neither hath Certainty, nor can be reduced to Certainty. *Dr. & Stud. l. 3. c. 4, 9.*

*Incertainity
reduced to
Certainty.*

Nevertheless (altho it be a Paradox) in some Cases there may be a Certainty in an Incertainity: As for a Man to hold of his Lord to shear all his Sheep depasturing within the Lord's Manor; and this is certain enough, although the Lord hath not always a certain Number of Sheep, but sometimes a greater Number, and sometimes a lesser; yet this Incertainity being reduced to the Manor which is certain, the Lord may distrain for. And a Distress is inseparably incident to every Service that may be reduced to Certainty.

*Surplusage
of Rent.*

If there be Lord and Tenant, and the Tenant pay the Lord a greater Rent than is due to him, and that voluntarily without Coercion or Distress,

stress; in this Case the Lord having gained Seisin, may distrain for such Surplusage of Rent, and the Tenant cannot avoid it upon the Lord's Avowry, because of the Seisin of the Rent; but in such Case he may have his Remedy by a Writ of *Ne injuste vexes* upon the Statute of *Magna Charta*, c. 10. *F.N.B.* 11. Co. 1 par. *Inst.* f. 25.

But note, This Rule holdeth not in the Case of a Successor or Issue in Tail, for they may avoid such Incroachment in an Avowry; or if the Incroachment be of another Nature than the Service, if that it be gained by Coercion of Distress, in such Case the Tenant may avoid such Seisin in an Avowry. Co. 2 *Inst.* f. 21. *Exception.*

A Rent-Charge was granted for Years, with a *Nomine Pænæ* and Clause of Distress if it were not paid at the Day, and the Rent was behind and the Years incurred, and it was moved, if the Grantee might distrain for the *Nomine Pænæ*, the Years being incurred? And the Opinion of the whole Court was, That he could not distrain for the *Nomine Pænæ*, for that did depend on the Rent, and the Distress was gone as to both. *Rent-charge.*

Pasch. 19 Jac. in C. B. Tatter and Fryar's Case. Winch, Rep. f. 7.

Estray.

If an Horse or Beast come into a Man's Ground as an Estray, he may not work them; neither may a Man work a Distress, for he hath neither Property or Possession *in Jure*; but if a Man hath an Horse, Ox or Cows in Pawn, he hath a special Property in them, and may work and use them in such sort as the Owner may do. *Owen's Rep. f. 123. Cro. 2 par. f. 148.*

Forestalling the Way.

If the Tenant forestall the Way with Force and Arms, and threaten in such manner that the Lord dares not come to demand or distrain for the Rent, or if there be no Distress on the Ground, nor none ready to pay the Rent, then in this Case the

Novel Disseisin.

Lord may have a Writ of *Novel Disseisin* against the Tenant, and recover his Rent and Arrearages: And if the Rent be behind another Time, he may have a *Redisseisin*, and recover double Damages. *Co. Lit. 153. b. 161. b. Fleta, l. 1. c. 42. Noy's Max. p. 45.*

Herriots.

Also for Heriot-Service the Lord may distrain or seise; but for Heriot-Custom he cannot distrain, but may seise. *Dr. & St. f. 75.*

Tenant

Ch. 4. Landlords and Tenants. 177

Tenant to pay a Heriot Beast, or
5 l. at the Election of the Lessor.

A Bailiff may not distrain for such
Heriot before the Lessee hath de-
clared his Election, though the Lessor
may. *Lit. Rep.* 33, 35.

An Heriot shall go with the Re-
version as well as the Rent, and
for which the Grantor may distrain.
2 *Saund.* 166. *Vide ante.*

And it seems that a Bailiff, where *Tender.*
a lawful Tender of Rent has been
refused, may not distrain without the
Command of the Lessor. *Lit.* 34.
Vide ibid. 65.

Where a Lease is made to com- *Heriot.*
mence on the Determination of ano-
ther, if the new Lessee dies before
his Term commences, it's said the
Heriot reserved shall not be due.
1 *Vent.* 91. 2 *Saund.* 165. 2 *Keb.* 677.
1 *Sid.* 437.

If a Man hath Common without *Common.*
Number, yet he ought not to sur-
charge the Soil, but that the Lord
may have the Common also. 1 *Saund.*
345.

And if a Tenant over-charge the *Surcharge.*
Soil where he has Common with-
out Number, the Lord may distrain
him, but an Admeasurement does not
lie.

If a Stranger put his Cattle into the Common, a Commoner may distrain them, but in the Avowry he ought to shew Damages. 2. *Lev.* 252. 3 *Lev.* 104. And that the Lord of a Common cannot put in the Cattle of a Stranger. 1 *Lutw. Rep.* 107. See afterwards, *Chap.* 7.

Lease ended.

Though a Man may not distrain for Rent after the Lease is ended, nor out of the Premisses, (except in some special Cases) nor in the Night unless for *Damage feasant*: Yet the Executors or Administrators of him who had Lands in Fee, or Fee-Tail, or for Life, may either have an Action of Debt against him that should pay it, or distrain for it; and so may the Husband after the Death of his Wife, his Executors or Administrators, and he which hath Rent for another's Life for the Arrearages after his Death.

Executors may.

Grantee.

The Grantee of a Reversion may distrain for an Heriot. 2 *Saund.* 166.

Beasts escape.

If the Beasts escape into any Ground, and the Lord distrain them for Rent, the Distress is good. *Idem* 289, 290. And that 'tis not material whether they were Levant or Couchant, or not. See after.

Where

Where Cattle escaped out of a *Want of*
Close next adjacent, adjudged that *Fences.*
they might be distrained for Rent,
altho' they escape through Default of
the Fences which the Party distrain-
ing ought to have repaired. *Id.* 289.

A Lord of the Soil may distrain *Soil da.*
for *Damage fasant*, although he have *maged.*
no Interest in the Herbage, for there
may be other Damages besides eating
the Grass. *Idem* 328.

A Man puts Cattle into my Pa-Cattle *da.*
sture for a Week, and afterwards *pasturing.*
I give him Notice that I will keep
them no longer, and he will not fetch
them away; I may then distrain them
Damage fasant. *Noy's Max.* 33.

If a Man takes Cattle *Damage fe-Rescous,*
asant, and as he is driving them to *where.*
Pound, they run into the Yard or
House of the Man that owns them,
and he refuses to let them out again,
he that distrained them may have a
Writ of *Rescou* against the Owner of
the Beasts for so doing.

If a Landlord come to distrain for *where not.*
Rent, and see the Cattle, and the
Lessee or his Servants drive them out
of his Fee, he cannot have a Writ of
Rescous, because the Cattle were not
in his Possession: But he may fol-
low after them, and distrain them
in

in another Man's Ground, it being for Rent, but not for *Damage fesant*; for they must be taken *Damage fesant*, that is, doing Damages. Co. 1 par. *Inst. f. 161.*

*Cause to
be shown.*

If a Man distrain Goods, and declare not the Cause or Reason wherefore he doth it, if they be put in a House, the Owner may break the House and take them out. *Clayton's Rep. p. 64. pl. 111.*

*Rescue
lawful.*

Or if a Man distrain Goods without Cause, the Owner may rescue them; but if they be pounded, he cannot break the Pound and take them out, because they are then in the Custody of the Law.

But if he find the Pound-Door unlock'd, he may take them out.

*General
Prohibition.*

Altho' there be a general Prohibition in the Laws of *England*, That it shall not be lawful for any Man to enter upon the Freehold or Possession of another, without Permission and Authority of the Owner, or of the Law; yet this is not without Exception.

Exception.

For if a Man drive Beasts along the High-way, and the Beasts run into any Man's Corn or Grass, and he that driveth them goeth after them into the Grounds to fetch them out,

Ch. 4. Landlords and Tenants. 181

out, he may justifie that Entry into the Grounds to fetch them out. *Dr.*

& *St. l. 1. c. 10.*

Also hindring the carrying of a *Homicide*, lawful Distress, is a Provocation to make killing no more than Homicide. 1 *Vent.* 216. the Case of *Goff*, Collector of Chimney-Money.

The Court held, That Cattle driving to a Market, and put into Pasture by the Way, were not privileged from being distrained; for 'tis by the Statute of *Marlbridge*, That Beasts cannot be distrained in the High-way, and not by the Common Law. 2 *Vent.* 50. 3 *Lev.* 260.

Where one holds a third Part of Licence, certain Land, and another two Third Parts of the same Land undivided, he who hath the one Part cannot distrain the Cattle which were put in by Licence of him who hath the two Parts. *Id.* 228, 283. *Hob.* 80, 103.

If a Man make a Feoffment, and that in Fee by Indenture reserving a Rent, he cannot distrain for that Rent, unless a Distress be expressly reserved; and if the Feoffment be made without an Indenture reserving Rent, that Reservation is void in the Law. And the like Law is where a Gift is
Tail,

Tail, or a Lease for Term of Life is made, the Remainder over in Fee reserving a Rent, that Reservation is void in the Law.

*Clause of
Distress.*

Also, if a Man seised of Land for Term of Life granteth away his whole Estate; reserving a Rent, that Reservation is void in the Law, without it be by Indenture : And if it be by Indenture, he shall not distrain for the Rent, without a Clause of Distress be reserved. *Dr. & St. l. 2. c. 9.*

*Rent reserved at
two Feasts.*

Also if a Man makes a Lease at *Michaelmas* for a Year, reserving a Rent payable at the Feast of the Annunciation of our *Lady* and *St. Michael* the Archangel ; in this Case he may distrain for the Rent due at our *Lady-day*, but not for the Rent due at *Michaelmas*, because the Time will be expired. *Ibid.*

But see after the late Acts, Yet if a Man make a Lease at the Feast of *Christmas*, for to endure to the Feast of *Christmas* next following, viz, for a Year, reserving a Rent at the aforesaid Feasts of our *Lady-day* and *Michaelmas* ; in this Case he shall distrain for both the Rents as long as the Term continues, that is to say, till the aforesaid Feast of *Christmas*. *Ibid.*

And

Ch. 4. Landlords and Tenants. 183

And if a Man have Lands for *Reversion* Term of Life of *J. N.* and makes a *determin'd* Lease for Term of Years, reserving a Rent, the Rent is behind, and *J. N.* dieth; there he shall not distrain, because his Reversion is determined. *Ibid.*

And if a Town or Parish be a *Assessment* merced, and the Neighbours by *Assessment* sent assess a certain Sum upon every Inhabitant; and agree, That if it be not paid by such a Day, that certain Persons thereunto assigned shall distrain; in this Case, the Distress is lawful. *Ibid.*

If there be Lord and Tenant, and *Rent-Seck.* if the Tenant do hold of the Lord by Fealty and Rent, and the Lord doth grant away the Fealty, and reserve the Rent, and the Tenant attorneth; in this Case he that was Lord may not distrain for the Rent, for it is become a Rent-Seck. *Ibid.*

But if a Man make a Gift in Tail *Upon a Gift* to another, reserving Fealty and *in Tail.* certain Rent, and after that he granteth away the Fealty, reserving the Rent and the Reversion to himself; in this Case, he shall distrain for the Rent, for the Grant of the Fealty is void; for the Fealty cannot be severed from the Reversion. *Ibid.*

Also

*Upon an
Assignment
of Rent.*

Also if a Rent be assigned to make a Partition or Assignment of Dower Equal, he or she to whom that Rent is assigned may distrain. And in all these Cases aforesaid, where a Man may distrain, he may not distrain in the Night; but for *Damage feasant*, that is, where he finds Beasts doing Hurt in his Ground, he may distrain them Night or Day when he finds them; but for Waste, Reparations, Accompts, or for Debts upon Contracts, or such-like, no Man can lawfully distrain.

*Amends
tendered.*

If Beasts be distrained *Damage feasant*, Tender of sufficient Amends makes the Distrainer liable to Damages for Detainer, though not for the Distress. *Lit. Rep. 34. Vide c. 5.*

*Dead
Goods di-
strain'd
must not
be put in
an open
Pound.*

If a Man distrain dead Goods which may receive Damage by the Weather, he ought to impound them in a House, or other Pound Covert within three Miles in the same County; for if he impounds them in a Pound Overt, he shall answer for them. *Co. Lit. 47. b.*

*Distress
must not be
tied in an
open Pound.*

If a Horse leaps over the Pound it is not lawful for the Person distraining to tie him there notwithstanding; for if the Horse receive any Damage, the Owner may have

an

an Action of Trespass, according to 27 Ass. 64. where a Horse having leaped over the Pound three times was afterwards tied to a Post there and strangled himself.

Where one abuses a Distress, he is *He who abuses a Distress is a Trespasser ab initio*, and therefore if in Trespass the Defendant justifies *nomine districtionis*, the Plaintiff may shew an Abuse and it is no Departure, but makes good his Declaration. *Gargrave. v. Smith. Hill. 2 W. & M. C. B. Salk. 221.*

One who was not a common Car-Goods in a rier undertook to carry Goods from *Carrier's London to Birmingham*; and at *Birmingham* put the Goods with the Wag-Custody cannot be distrain'd. gon into his Barn, where they continued two Nights and a Day, and then the Landlord came and distrained them for his Rent. *Resolv. per Cur.* That where Goods are deliver'd to any Person exercising a publick Trade or Employment, to be carried, wrought or managed in the way of his Trade or Employ, they are for that Time under a legal Protection and privileg'd from Distress for Rent: And it was further resolv'd, That any one undertaking for Hire to carry the Goods of all Persons indifferently, is as to this Privilege a common Carrier,

Carrier, for the Law gives this Privilege in respect of the Trader, and not in respect of the Carrier. *Gisburn v. Hurst. Hill. 8 Anna. B. C. Salk. 249.*

Where

Cattle may be distrain.

ed b. fore

Levant and

Couchant,

and where

not.

Where Cattle escape into a Man's Lands through Default of the Lessor or his Tenants, in not making up the Fences, they cannot be distrain'd for Rent arrear for such Lands until the Owner have Notice, or until they have been Levant and Couchant. *Lutwych 1578.*

Kemp v. Cruwes : But where Cattle escape by Default of their Owner, and are Trespassers, they may be distrain'd for Rent before they are Levant and Couchant, or before the Owner has Notice of their being upon the Lands. *Id.*

But whether the Lord or the Grantee of a Rent-Charge may not distrain the Cattle of a Stranger that have escap'd into Lands out of which such Rent is issuing, before they have been levant, &c. altho' there was a Defect in the Fences, *Vide Lutwych 1579.* where it seems to be admitted.

Note, It seems Goods and the Tools of a Man's Trade are distrainable for a Duty arising by Act of Parliament, tho' not for Rent, or Amerciaments, or other Duties due by the Common Law. 2 *Show. 127. Sed Quare.*

An

An Act made in the Second Year of the Reign of King *William* and Queen *Mary*, for enabling the Sale of Goods distrained for Rent.

W Hereas the most ordinary and Defect of ready Way for Recovery of Ar- former
rears of Rent is by Distress; yet such Di- Laws.
stresses not being to be sold, but only detained as Pledges for enforcing the Payment of such Rent, the Persons distraining have little Benefit thereby.

For the Remedying thereof, be it enacted- Remedy.
ed and ordained by the King and Queen's most excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by Authority of the same;

That from and after the first Day of June, in the Year of our Lord One Thousand six hundred and Ninety, That where Goods and any Goods or Chattles shall be distrained Chattels
for any Rent reserved and due upon any ^{distrained}
Demise, Lease or Contract whatsoever; ^{for Rent.}
and the Tenant or Owner of the Goods so distrained, shall not within five Days ^{if not re-}
next after such Distress taken, and No- ^{plevied}
tice thereof (with the Cause of such ^{within five}
Days after
Taking) Notice.

Taking) left at the Chief Mansion-House or other most notorious Place on the Premises, charged with the Rent distrained for, replevy the same, with sufficient Security to be given to the Sheriff, according to the Law; That then in such Case after such Distress and Notice as aforesaid, and Expiration of the said Five Days, the Person distraining shall and may with the Sheriff or Under-Sheriff of the County, or with the Constable of the Hundred, Parish or Place, where such Distress shall be taken (who are hereby required to be aiding and assisting therein) cause the Goods and Chattels so distrained to be appraised by two sworn Appraisers, (whom such Sheriff, Under-Sheriff or Constable, are hereby impowered to swear to appraise the same truly, according to the best of their Understandings) and after such Appraisement, shall and may lawfully sell the Goods and Chattels so distrained, for the best Price that can be gotten for the same, towards Satisfaction of the Rent, for which the said Goods and Chattels shall be distrained, and of the Charges of such Distress, Appraisement and Sale, leaving the Overplus (if any) in the Hands of the said Sheriff, Under-Sheriff or Constable, for the Owner's Use.

How they may be appraised. By two sworn Appraisers.

Concerning the Overplus.

As to Corn and Hay. And whereas no Sheaves or Cocks of Corn loose, or in the Straw, or Hay, in any Barn

Barn or Granary, or in any Hovel, Stack or Rick, can by the Law be distrained, or otherwise secured for Rent, whereby Landlords are oftentimes cozened and deceived by their Tenants, who sell their Corn, Grain and Hay, to Strangers, and remove the same from the Premises chargeable with such Rent, and thereby avoid the Payment of the same.

Be it further enacted by the Authority *A Remedy.* aforesaid, That for remedying the said Practice and Deceit, it shall and may, from and after the said First Day of June, be lawful to and for any Person or Persons having Rent arrear, and due *How Corn* upon any such Demise, Lease or Contract, and Hay as aforesaid, to seize and secure any *may be* Sheaves or Cocks of Corn, or Corn loose, *seized and* or in the Straw, or Hay, lying or being *secured* where in any Barn or Granary, or upon any Ho- *found.* found. vel, Stack or Rick, or otherwise, upon any Part of the Land or Ground charged with such Rent, and to lock up or detain the same in the Place where the same shall be found, for and in the Nature of a Di- *As a Di-* stress until the same shall be replevied *stress till.* upon such Security to be given as afore- *replevied.* replevied. said; and in Default of replevying the same as aforesaid, within the Term aforesaid, to sell the same after such Appraise- ment thereof to be made, so as neverthe- less such Corn, Grain or Hay, so distrain- ed,

Not to be
removed
till reple-
vied or
sold.

ed, as aforesaid, be not removed by the Person or Persons distraining, to the Damage of the Owner thereof, out of the Place where the same shall be found and seised, but be kept there (as impounded) until the same shall be replevied or sold, in Default of replevying the same within the Time aforesaid.

In case of
Pound-
Breach or
Rescous.

And be it further enacted by the Authority aforesaid, That upon Pound-Breach or Rescous of Goods or Chattels distrained for Rent, the Person or Persons grieved thereby shall, in a special Action upon the Case, for the Wrong thereby sustained, recover his and their treble Damages and Costs of Suit against the Offender or Offenders in any such Rescous or Pound-Breach, any or either of them, or against the Owner of the Goods distrained, in case the same be afterwards found to have come to his Use or Possession.

The Party
shall reco-
ver treble
Damages
and Costs.

Provided always, and be it further enacted, That in case any such Distress and Sale, as aforesaid, shall be made by Vertue or Colour of this present Act for Rent, pretended to be arrear and due, where in Truth no Rent is arrear or due

If Goods be
distrained
and sold
where no
Rent is due.

to the Person or Persons distraining, or to him or them in whose Name or Names, or Right, such Distress shall be taken as aforesaid, that then the Owner of such Goods

and

and Chattels distrained and sold as aforesaid, his Executors or Administrators, shall and may by Action of Trespass, or upon the Case, to be brought against the Person or Persons so distraining, any or either of them, his or their Executors or Administrators, recover double the Value of the Goods or Chattels so distrained and sold, together with full Costs of Suit. The Owner shall recover double Value and full Costs.

An Oath to be Administred to the Appraisers of the Goods, &c.

YOU shall well and truly, according to the best of your Understanding, appraise the Goods and Chattels of H.R. distrained on for Rent by O.P. of which Goods and Chattels you shall have good Sight and Consideration.

So help you GOD.

Upon this Act some have made these Observations, viz. by the latter Clause of this Act it seems, That if Goods be distrained upon Pre-Observations.tence for Rent where none is due, yet no Action lies by this Act, unless they were also sold as well as distrained ;

strained ; so that the Party must not in this Case replevy his Goods, if he intend to take the Benefit of this Act.

But he may replevy them, or let them lie, and have the Benefit of the former Law.

Corn, &c. So the Party distraining Corn and Hay, and keeping it upon the Place under Pretence of Rent, is liable as formerly to an Action and Damages, if he cannot justifie that Rent was then due; and if he can, he may detain them there, till replevied or sold, by Vertue of this Act.

Tender of Rent, &c. And yet it seems, that after Appraisement of the Corn or Hay, and Tender of the Money, and reasonable Charges by some Person willing to buy the same; he may not detain the Corn or Hay longer in the Barn, Granary, Hovel, &c. for this would be great Prejudice to the Owner, if the Party distraining may sell them, after Appraisement, when and to whom he will. *Sed quare.*

Removed when.

The Words are, *Be not removed to the Damage of the Owner* thereof. This might have been enough, if the Party distraining had Right, he is bound to take Care of Damage,

But it seems the Corn and Hay must not be removed; for the following Words are,

But be kept there (as impounded) until the same shall be replevied or sold within the Time aforesaid; that is, after the Appraisement. And it is the Party distraining that shall and may cause them to be appraised, after five Days Notice: But quare, when or how soon after? See the following Act.

By an Act made *Anno octavo Anne Regine*, for the better Security of Rents, and to prevent Frauds committed by Tenants,

I*T is enacted, That from and after the Rent to be First Day of May, 1710. No Goods paid before or Chattels whatsoever lying or being in Goods shall be taken in Execution. or upon any Messuage, Lands or Tenements, which are or shall be leased for Life or Lives, Term of Years, at Will, or otherwise, shall be liable to be taken by Vertue of any Execution on any Pretence whatsoever, unless the Party, at whose Suit the said Execution is sued out, shall before the Removal of such Goods from off the said Premisses, by Vertue of such Execution*

cution or Extent, pay to the Landlord of the said Premises, or his Bailiff, all such Sum or Sums of Money as are or shall be due for Rent of the said Premises at the Time of the taking such Goods or Chattels by Vertue of such Execution,

Not to exceed one Year's Rent. Provided the said Arrears of Rent do not amount to more than one Year's Rent; and in case the said Arrears shall exceed one Year's Rent, then the said Party, at whose Suit such Execution is sued out, paying the said Landlord or his Bailiff one Year's Rent, may proceed to execute his Judgment, as he might have done before the making of this Act: And the Sheriff or other Officer is hereby empowered and required to levy and pay to the Plaintiff, as well the Money so paid for Rent, as the Execution-Money.

Distress upon a fraudulent Removal of Goods.

And that in case any Lessee for Life or Lives, Term of Years, at Will, or otherwise, of any Messuages, Lands or Tenements, upon the Demise whereof any Rents are or shall be reserved or made payable, shall from and after the first Day of May fraudulently or clandestinely, convey or carry off from such demised Premises his Goods or Chattels, with intent to prevent the Landlord or Lessor from distraining the same for Arrears of such Rent so reserved as aforesaid: It shall and may be lawful to and for such Lessor or Land-

Landlord, or any Person or Persons by him for that Purpose lawfully impowered, within the Space of five Days next ensuing such conveying away, or carrying off such Goods or Chattels as aforesaid, to take and seize such Goods and Chattels where-ever the same shall be found, as a Distress for the said Arrears of such Rent; and the same to sell or otherwise dispose of in such manner, as if the said Goods and Chattels had actually been distrained by such Lessor or Landlord, in and upon such demised Premises, for such Arrears of Rent; any Law, Custom, or Usage to the contrary in any wise notwithstanding.

Provided nevertheless, That nothing ^{Exception} in this Act contained shall extend or be of Sale construed to extend, to impower such Les- Bonâ fide for or Landlord to take or seize any Goods or Chattels as a Distress for Arrears of Rent, which shall be sold Bonâ fide, and for a valuable Consideration, before such Seizure made.

And that whereas no Action of Debt ^{Actions a-} lay against a Tenant for Life or Lives, ^{gainst To-} for any Arrears of Rent during the Con- ^{nants for} tinuance of such Estate, 'tis enacted, That ^{Life, &c.} it shall and may be lawful for any Person or Persons having Rent in Arrear, or due upon any Lease or Demise for Life or Lives, to bring an Action of Debt for such Arrears of Rent, in the same Man-

ner as they might have done in case such Rent were due and reserved upon a Lease for Years.

Distresses And that all Distresses to be made as
how liable *aforsaid*, shall be liable to such Sales, and
to Sale. in such Manner, and the Moneys arising
 by such Sales to be distributed in like
 Manner, as by an Act made in the Se-
 cond Year of the Reign of their late
 Majesties King William and Queen
 Mary, (intituled, An Act for ena-
 bling the Sale of Goods distrained for
 Rent, in case the Rent be not paid
 in reasorable Time,) is in that Be-
 half directed and appointed.

Remedy a- And that whereas Tenants Pur auter
gainst Te- vie (that is, for Life of another Person)
nants hold- and Lessees for Years, or at Will, fre-
ing over quently hold over the Tenements to them
their Lea- demised, after the Determination of such
ses. Leases. And whereas after the Determi-
 nation of such or any other Leases, no Di-
 stress can by Law be made for any Ar-
 rears of Rent, that grew due on such re-
 spective Leases before the Determination
 thereof; 'tis enacted, That it shall and
 may be lawful for any Person or Persons,
 having any Rent in Arrear, or due upon
 any Lease for Life or Lives, or for Years,
 or at Will, ended or determined, to di-
 strain for such Arrears after the Determi-
 nation of the said respective Leases, in the
 same

same Manner as they might have done, if such Lease or Leases had not been ended or determined.

Provided that such Distress be made *At what* within the Space of six Calendar Months Time. after the Determination of such Lease, and during the Continuance of such Landlord's Title or Interest, and during the Possession of the Tenant from whom such Arrears became due.

But that nothing in this Act contained *Saving to* shall extend, or be construed to extend, to *her Maje-* let, hinder, or prejudice her Majesty, her *sty, &c.* Heirs or Successors, in the levying, recovering or seizing any Debts, Fines, Penalties or Forfeitures, that are or shall be due, payable or answerable to her Majesty, her Heirs or Successors, but that it shall and may be lawful for her Majesty, her Heirs and Successors; to levy, recover and seize such Debts, Fines, Penalties and Forfeitures, in the same Manner as if this Act had never been made.

Note, By an Act of Parliament *17 Car. 2.* made at Oxford, in the Seventeenth *cap. 7.* Year of King Charles the Second, it is enacted, That whensoever any Plaintiff in Replevin shall be non-*Plaintiff* suit before the Issue joined in any *non-suited.* Suit of Replevin, by Plaint or Writ lawfully returned, removed, or de-
K 3 pending

pending in any of the King's Courts
 at *Westminster*; That the Defendant
Suggestion. making a Suggestion in Nature of
 an Avowry or Cognizance for such
 Rent, to ascertain the Court of such
Writ of In. Cause of Distress; then the Court
quiry to upon his Prayer shall award a Writ
the Sheriff. to the Sheriff of the County where
 the Distress was taken, to enquire
 by the Oaths of twelve good and
 lawful Men of his Bailiwick, touch-
 ing the Sum in arrear at the Time
 of such Distress taken, and the Va-
 lue of the Goods or Cattle distrain-
Notice. ed; and upon fifteen Days Notice
 given to the Plaintiff or his Attor-
 ney in Court, of the sitting of such
 Inquiry, the Sheriff may enquire of
 the Truth of such Matters contain-
 ed in the Writ, by the Oaths of
 twelve Men, &c. And upon Re-
 turn of the Inquisition, the Defen-
 dant (that is, he that distrained)
 shall have Judgment to recover a-
 gainst the Plaintiff the Arrearages
 of such Rent, in case the Goods or
 Cattle distrained shall amount un-
Value. to that Value; and in case they
 shall not amount unto that Value,
 then so much as the Value of the
 said Goods and Cattle shall amount
 unto, together with his full Costs
 of

of Suit, and shall have Execution thereupon by *Fieri facias*, or *Elegit*, or otherwise, as the Law shall require. And in case such Plaintiff shall be nonsuit after Cognizance or Avowry made, or Issue joined, ^{Verdict} or if the Verdict shall be given a- ^{against the} gainst such Plaintiff, then the Ju- ^{Plaintiff,} rors that are impanelled or retorn- ^{&c.} ed, to enquire of such Issue, shall at the Prayer of the Defendant enquire concerning the Sum of the Arrearages, and the Value of the Goods or Cattle distrained: And thereupon the Avowant, or he that makes a Conusance, shall have Judgment for such Arrearages, or so much thereof as the Goods and Cattle amount unto, together with his full Costs, and shall have Execution of the same as aforesaid.

And if the Judgment in any of ^{Judgment} the Courts aforesaid be given upon ^{upon a De-} Demurrer for the Avowant, or him ^{murrer.} that maketh Conusance for any Rent, the Court shall, at the Prayer of the Defendant, award a Writ to enquire of the Value of such Distress; and upon the Return thereof, Judgment shall be given for the Avowant, or him that makes Conusance as aforesaid, for the Ar-

rears alledged to be behind in such Avowry or Conufance, if the Goods or Cattle fo distrained fhall amount to that Value; and in Cafe they fhall not amount to that Value, then for fo much as they amount unto, together with his full Cofts of Suit, and have Execution thereof as aforefaid.

*Second Di-
frefs for
the Refidue*

And in all Cafes aforefaid, where the Difrefs is not of the Value of the Rent Arrear, there the Party to whom thefe Arrearages are due, his Executors or Administrators, may from Time to Time diftrain again for the Refidue of the faid Arrears, which formerly a Man could not do, for he might not diftrain twice for one Rent; for it was accounted his Folly, that he took not a fufficient Difrefs at firft. But now by the Statute, That and feveral other Advantages are taken away from the Tenant.

*4 & 5
Ann.*

By the late A&t, for the Amendment of the Law, 4 & 5 *Anna*, It is lawful for any Defendant or Tenant in any Action or Suit, or for any Plaintiff in Replevin in any Court of Record, with the Leave of the fame Court, to plead as many feveral Matters thereto as he

Ch. 4. Landlords and Tenants. 201

he shall think necessary for his Defence.

Provided, That if any such Matter shall, upon a Demurrer join'd, be judged insufficient, Costs shall be given at the Discretion of the Court. Or if a Verdict shall be found upon any Issue in the said Cause for the Plaintiff or Defendant, Costs shall also be given in like Manner; unless the Judge who tried the said Issue shall certifie, That the said Defendant or Tenant, or Plaintiff in Replevin, had a probable Cause to plead such Matter, which upon the said Issue shall be found against him. See more of *Replevin* in the next Chapter.

C H A P. V.

Of Rescous, in what Cases it may be lawful: Of Replevins, how they may be sued out; and of Avowries to Declarations upon Replevins.

*Rescous,
what.*

THE Word or Term *Rescous* is derived from an old Norman Verb *Rescours*, which is in the Latin *Recuperare*, that is, to take from, to get again, or recover: So that *Rescue* is as much as to say, to recover or get again what another hath taken away. *Coke 1 par. Inst. 160.*

And in the Sense of the Law, *Rescous* is taking away and setting again at Liberty Goods distrained, or the Body of a Person arrested, and in an Officer's Custody by Vertue of legal Process.

Of Distresses.

Such Kinds of *Rescous* as appertain unto our present Subject, are of Distresses taken: and we are therein to consider, in what Cases it may be justifiable to *rescue* Goods or Cattle distrained, and where not.

If

If a Landlord distrain when there ^{When} is no Rent due, the Tenant may ^{Lawful.} make a *Rescue*, and hinder that Distress. *Co. L. 4. f. 11.*

In like manner if a Landlord come to distrain, and the Tenant tender his Rent unto him, and the Lord will distrain notwithstanding; in this Case the Tenant may make *Rescous*, *1 Inst. f. 160.*

If Rent be in Arrear, and the Lord ^{In High-} distrain the Tenant's Cattle in the ^{way.} Highway within his Fee; here also the Tenant may *rescue* them, for no Man may distrain in the Highway but the King and his Officers by special Authority. *Coke, ibid. Magna Charta, f. 25.*

In like manner, if a Landlord di-Averia strain *Averia Caruca*, Goods of the ^{Carruca.} Plough, where there is a sufficient Distress to be taken besides; or if the Lord distrain any Thing that is nor distrainable by Common Law or Statute: In this Case, it is lawful for the Tenant to make *Rescue. ibid. f. 112. Rastal Tit. Distress 10.*

But if a Lord come to distrain Cattle which he seeth within his Fee, and the Tenant or any others to prevent the Distress drive the Cattle away out of the Fee; the
Lord

Fresh Suit. Lord may follow them with fresh Suit and distrain the Cattle, and the Tenant cannot justifie a *Rescons* of them, because in the Judgment of the Law the Distress is taken within his Fee. *Hugh's Grand Abr. 1 part. p. 217. C. 21.*

Rescue justifiable. But if the Lord be coming to distrain, and have not Sight of the Cattle within his Fee, though the Tenant drive them off on purpose, or if the Cattle after the View go out of the Fee of their own Accord, or if the Tenant after the View removeth them for any other Cause than to prevent the Distress; then if the Lord distrain them out of his Fee, the Tenant may justifie a *Rescue*. *Co. 1 par. Inst. fol. 161.*

If the Lord distrain out of his Fee in Lands not holden of him, the Tenant may make *Rescons*, unless in the Cases aforesaid. *Co. Lit. 161. a.*

Rescons returned. If *Rescons* be returned without shewing the Place where *Rescons* was made, it is void. *Mo. Rep. 112. pl. 562.*

Damage fasant. If a Man come to distrain Cattle *Damage fasant*, and see the Beasts in his Ground, and the Owner of the Cattle drives them out before the Distress taken; the Owner of the Ground

Ground cannot follow and take them, for if he do, the Owner of the Cattle may rescue them, for they must be *Damage fasant*; that is, doing Hurt at the Time of the Distress taken, and the Owner of the Ground may bring his Action of Trespass. *Coke, Ibid.*

The Lord cannot break open any *Disseisin.* Gate that is locked, nor break open any Inclosure to take a Distress: So that if a Tenant lock up his Gates, and inclose his Ground, so that the Lord cannot come to distrain, if the Rent be behind, and the Lord have had actual Possession, this is a *Disseisin.* *Coke, Ibid.* But see the late Acts.

For the Ease and speedy Remedy *Replevin.* of the Country, in case of Distresses where the Cattle be pounded, the Statute hath provided, That every Sheriff at his own County-Day, or within two Months after he first receives his Patent, is to depute and proclaim in his Shire-Town four Deputies to make *Sheriff's Deputies.* Replevins within his County, which must reside within twelve Miles one of another, on Pain of five Pounds a Month for every Month they are wanting.

So that when any Man's Goods are distrained or impounded, he may repair to one of these Sheriff's Deputies for that Purpose; and there he may have a Replevin (upon *Plegii de Retorn. habendum si, &c.*) to cause the Goods distrained to be delivered to the Owner.

Replegiari. There is likewise a Writ *De Replegiari facias* at the Common Law, whereby the Sheriff is commanded, taking Pledges of Prosecution, to re-deliver the Goods distrained to the Owner: But since the other is the readier and easier Way, this Writ is out of Fashion.

Tenant is Plaintiff. In a Replevin, he whose Goods are distrained or impounded becomes the Plaintiff, and declares against the other for unjustly taking and detaining his Goods or Cattle *contra vad. & pleg. &c.*

Withernam. If a Landlord distrain, and carry the Distress to Hold, or out of the County, so that the Sheriff upon a Replevin cannot re-deliver the Goods, then upon the Sheriff's Return of the Replevin, Tenants may have a Writ of *Withernam* directed to the Sheriff, to take as many of the Lord's Beasts, or as much Goods in his keeping, till he have made Deliverance of the first

first Distress; and if the Goods or Cattle be conveyed to a Fort or Castle, the Sheriff may command the Power of the County, and beat it down. *Rastal, Tit. Distress, 7.*

If a Distress be made in a Fran-*Franchise*chise or Bailiwick, the Sheriff is to direct his Replevin to the Bailiff thereof to deliver them upon Pledges, &c.

And if he make no Answer, or *Sheriff may* return that he will make no Deli-*enter.*verance, or the like, then the Sheriff may enter into the Liberty and make Deliverance; and if the Distress was taken without the Liberty, and impounded within the Liberty, then the Sheriff may enter and make Deliverance, and need not first to make a Warrant to the Bailiff of the Liberty. *Stat. Marbl. c. 21. Westm. 1. c. 17. 2 Co. Inst. 140, 194.*

The Plaintiff in the Replevin *Property.* ought to have the Property of the Goods in him at the Time of the Distress made; for if the Defendant claim Property, the Sheriff cannot replevy the Distress, but the Property must be tried by Writ.

So that if the Defendant claim Property in the Goods distrained, then must the Plaintiff in the Replevin

Proprie-^r vin have a Writ *De Proprietate proban-*
 rate pro-*da*, directed to the Sheriff to try the
 banda. Property; and if the Jury find for
 the Plaintiff, then the Plaintiff must
 make Deliverance of the Distress:
 And if it pass for the Defendant, the
 Sheriff can proceed no further, unless
 the Plaintiff bring a Writ of *Replegiari*
facias directed to the Sheriff, and
 then though he do return the Pro-
 perty, yet it shall proceed to Trial
 in the Common Pleas upon the Issue
 of the Property. *Co. 1 par. Inst*
f. 145.

Two Kinds. And 'tis noted, That there are two
 Kinds of Properties; that is, a ge-
 neral Property, which every absolute
 Owner hath; and a special Proper-
 ty, as of Goods pledged or taken
 to manure one's Lands, and the like;
 and of both these a Replevin doth
 lie, *Co. Lit. 145. b.*

But a Man cannot claim Property
 by his Bailiff or Servant.

Recordare. The Defendant in a Replevin, that
 is, he that made the Distress, may, if
 he see Cause, bring a Writ of *Recor-*
dare, and so remove the Plaintiff upon
 the Replevin out of Sheriff's County-
 Court into the Common Pleas; and
 if the Plaintiff declare not, he may
 have a *Retorn' habend'*. And then if
 he

he declare not, a Writ to enquire of Damages. 2 Co. Inst. 339.

And if a Replevin be depending by Writ out of Chancery, the Plaintiff or Defendant may remove the Plea by a *Pone*, and if the Plea be depending in the County, the Plaintiff may remove the same without Cause; but the Defendant cannot move the same without Cause, which must be inserted in the End of the Writ 2 Co. Inst. 339. Reg. Orig. 84. F. N. B. 69.

If a Man by his Deed grant a Rent with a Clause of Distress, and grant further that he shall keep the Goods distrain'd against Sureties and Pledges till the Rent be paid; this Grant is not good, but the Sheriff may replevy the Goods distrained notwithstanding: For if such a Distress should be irrepleviable, the Current of Replevins should be stopped, to the great Damage of the Subject.

If the Goods or Cattle of several Men be distrained, they cannot join in a Replevin, but every Man must have a several Replevin: For in a Replevin it is a good Plea to say, the Property is to the Plaintiff and to a Stranger; and where there be two Plaintiffs, that the Property is to

to one of them. Co. 1 par. Instit. f. 145.

*Driving
Distress.*

If a Man take a Distress in one County, and drive it into another, the Owner of the Cattle may sue a Replevin in which County he pleaseth, *Compt. Att.* 131.

*Dead Cattle,
&c.*

In a Replevin, if it be of two Cattle, one living, the other dead, the living shall be first demanded. *Finch. l. 1. c. 3. p. 25.*

If the Cattle of a *Feme-Sole* be taken, and afterwards she taketh a Husband, now he alone may sue a Replevin. *Ibid.*

Declaration.

If the Plaintiff in Replevin do not set out the Place where the Distress is taken as well as the Town, his Declaration will be naught, and the Avowant may overthrow him upon a Demurrer. *Hob. Rep.* 16. int' *Read* and *Hawkes.*

If a Lord distrain his Tenant wrongfully, although the Cattle be come back again to the Owner; yet the Tenant may have a Replevin against the Lord, because he cannot have an Action of Trespass against him.

Caution.

The Plaintiff in a Replevin ought to be careful in giving his Instructions for it, for it must be certain in setting

setting down the Number and Kinds of the Cattle which are distrained, otherwise the Replevin is not good.

The *Avowant* is the Defendant in *Avowry*. a Replevin; that is, he that made the Distress; and when he justifies in his Plea for what Cause he distrained, that Plea is called his *Avowry*.

As if a Landlord distrains for Rent *In his own* in Arrear, and the Tenant or Owner *Right* of the Cattle brings a Replevin, and declares against him for unjustly taking and detaining his Cattle, and the Defendant justifies he took it in his own Right, and so shewing the Cause of his taking in his Plea: This is an *Avowry*.

But if the Defendant took the Distress for or in the Right of another, *Consuſance as Bailiff*. then when he hath shewed the Cause in his Plea, he must make *Consuſance* or Acknowledgment of the taking the Distress, as being Bailiff or Servant unto him in whose Right he took it.

There are four manner of *Avow-What* ries which a Lord may make upon *Avowries*. a Replevin:

1. *Avowry* upon his very Tenant.
Co. Lit. 9. f. 135, 136.

2. Upon

2. Upon his very Tenant by the Manor where the Tenant had but a particular Estate.

3. Upon his Tenant by the Manor where the Lord had but a particular Estate; and these three are Avowries at the Common Law.

21. H. 8.
c. 19.

4. The Lord may avow upon the Matter in the Land as within his Fee. This is provided by Stat. 21 H. 8. c. 19. and is the safest Way for the Benefit of the Lords; for by this Statute the Lord may avow the taking a Distress, as in Lands holden of him within his Fee, without naming of any Person in certain; which by the Common Law they could not do, but were thereby compelled to avow upon a Person in certain, which often proved much to their Damage and Prejudice: For by the secret Fines, Recoveries, Grants, and Conveyances, which the Tenants used purposely to frame to defraud their Lords, they were ignorant upon whom to make their legal Avowry; which Inconveniences the fore-mentioned Statute hath prevented.

*Plaintiff's
Advantage. Vide
ante.*

Now in an Avowry upon this Statute, the Plaintiff in the Replevin, be he Tenant for Years or otherwise, may

may have every sufficient Answer and Aid, and every other Advantage in the Law to the Avowry, Disclaims only excepted; for because the Avowry is made upon no certain Person, he cannot disclaim.

And if such Plaintiffs be non-suit or barr'd, or overthrown by the Avowry, then the Defendant or Avowant shall recover ^{Costs and Damages for the Defendant.} Costs and Damages against the Plaintiff, as the Plaintiff should have done if he had recovered in the Replevin against the Avowant.

If any Avowry is made for Rent, and it appears by the Party's own shewing that Part of it is not yet due, yet the Avowry may be good for the Residue. 1 Saund. 285.

But if it appears, that an Avowant has Title only to two Parts of the Rent, for which he avows, the whole Avowry shall abate. *Idem* 286.

Also in an Avowry for Rent, and *Nomine Nomine Pœnæ* together, without *al-Pœnæ*. ledging any Demand of Rent, the Avowry is good for the Rent, altho' it is ill for the Penalty. *Ibid.*

Avowry for Rent due at a later ^{Bar.} Day, is not a Bar in Avowry for Rent due at a former Day; neither is a Recovery in Debt for Rent due at

a later Day, a Bar in Debt for Rent due at a former Day, as an Acquittance is. 1 *Lev.* 43.

Plea.

In Replevin, the Defendant pleaded they were the Beasts of a Stranger: Whereupon the Plaintiff demurred, because 'twas only a Plea in Abatement. The Court said, It was good either in Bar or Abatement, and that there needed no Avowry for a Return, because the Beasts being not the Plaintiff's, the Avowant is to have the Return; and Judgment was given for the Defendant. 2 *Lev.* 92. See before, Stat. 17 *Car.* 2. at the End of *Chap.* 4.

Arrearages lost.

If a Tenant hath Rent behind for divers Years, and makes a Feoffment in Fee, and the Lord accept the Rent or Service of the Feoffee due in his Time, he shall lose the Arrearages of his Rent due in the Time of the Feoffor: For after such Acceptance, the Lord cannot avow upon the Feoffor, nor upon the Feoffee, for the Arrearages due in the Time of the Feoffor; but if the Feoffor dieth, although the Lord accept the Rent or Service by the Hands of the Feoffee due in his Time, yet he shall not lose the Arrearages, because he is now by the Law compelled to

avow upon the Feoffee; and what the Law enjoins him to, shall not be prejudicial unto him.

If the Plaintiff in a Replevin be nonsuit, or otherwise by Avowry &c. barred or overthrown; then the Defendant or Avowant shall recover Costs and Damages against the Plaintiff, as the Plaintiff should have done or had, if he had recovered in the Replevin against the Avowant. See before, Chap. 4.

For the Learning of Avowries, see *D'Anvers's General Abridgment*, Tit. *Avowry*, f. 644, 645, &c.

C H A P. VI.

In what Cases a Tenant or other shall be said to commit Waste in Houses, Gardens, Woods, Pastures, Orchards, &c. and what Waste shall be punishable, and what not.

*Caution
against
Waste.*

IT concerns every Tenant, of what Nature soever his Tenure be, to be very careful herein; for he may in committing Waste soon become obnoxious to the Law, and incur great Damage.

I shall therefore by way of Caution shew you in what Cases a Tenant may commit Waste, so as to render himself liable to Loss and Punishment; and then how far a Tenant may act upon his own Tenure, and not commit any punishable Waste.

Waste, how. If a Tenant for Life or Years, or in Dower, do pull down any of the Houses or Tenements, or suffer them to be uncovered, to the rotting or destroying of the Timber or

Ch. 6. Landlords and Tenants. 217

Materials of the House, this is Waste.

Coke, 1 par. Inst. f. 53.

So likewise if Glass-Windows be *Glass Windows* broken down or carried away, it is *downs*.

Waste, though the Tenant glazed them himself, for the Glass is part of the House. It is also Waste to take away Wainscot, if it be fixed to the Walls or Posts of the House.

It is likewise Waste to take away *Doors*. Door or Windows, or any Thing annexed or fixed to the Freehold, although the Tenant fixed them there himself.

If a Tenant build a new House *Building* where none was before, it is Waste: And if he suffer it to be wasted, it is a new Waste.

The pulling down of a Stone-*Walls*. Wall or Mud-Wall of an House, is Waste. *Coke, Ibid.*

If a Tenant of a Park, Warren, *Parks, &c.* Dove-House, or the like, do not leave such sufficient Stores as he found when he entred, it is Waste; and so it is to suffer a Park-Pale to decay, whereby the Deer are lost or dispersed.

If the Tenant suffer the House to be wasted, and then fell Timber to *Felling Timber* repair them, this is a double Waste.

Co. 1 par. Inst. 53.

L

Waste

*Timber**Waste, &c.*

Waste is properly in Houses, Gardens and Timber-Trees; that is, Oak, Ash and Elm, which are counted Timber generally in all Places; except in some Copyholds Elm is not.

Now these Timber-Trees are said to be wasted, either by cutting them down, lopping or topping them, or any otherwise decaying the Timber.

And in some Countries where Timber is scarce, Beech is accounted Timber, or other Trees used for building Houses; and there the cutting of them is Waste, *Idem.*

Or if a Tenant suffer the young Germens of Trees to be destroyed, this is Destruction, and punishable in Waste.

*Willows,**Birch, &c.*

To cut down any Trees, as Willows, Birch, or the like, which stand and grow in the Defence and within View of the Dwelling-House, is Waste.

Hazels.

It is a Waste to cut down Hazels which grow not under the great Trees, but in a Quarter of the Wood by themselves.

If a Tenant grub up or destroy a quick Fence of White Thorn, it is Waste. *Co. 2 par. Inst. f. 53.*

Burne

Ch. 6. Landlords and Tenants. 219

Burning of a House by Negligence or Mischance was Waste. But ^{House-}burning. is since made otherwise; yet if it happen through the Negligence of a Servant, such Servant forfeits 100 l. or to be sent to the Work-House for Eighteen Months. See at the latter End of this Treatise.

Where is a Wood, and nothing ^{Wood.} growing there but Underwood, the Tenant cannot cut all: But if it be a Wood where great Trees grow amongst the Underwood, there he may cut all the Underwood.

It is Waste to cut Apple-trees, if ^{Fruit-}they bear Fruit, though they lie ^{Trees, &c.} along the Ground.

It is also Waste to cut Damask-Trees, or any Fruit-Trees growing in a Garden or Orchard.

To dig for Gravel, Chalk, Clay, ^{Digging.} Brick, Earth or Stones, or the like, is Waste; and so it is if a Tenant dig for any Mines which were not open at the Time of the Lease made.

To suffer a Bank or Wall of the ^{Sea-Banks} Sea to be in Decay, so that by the ^{&c.} Flux and Reflux of the Sea the Marsh is overflown, so that it becomes unprofitable, is Waste.

But if the Sea break in suddenly by a violent Tempest, it is no Waste,

It is Waste also if a Tenant suffer the Banks of any River or Water to decay, whereby the Ground is surrounded, or becomes unprofitable; so it is to suffer Pasture-Ground to be surrounded so as it become rushy, or Arable-Land, so that it becomes tough Clay.

Arable.

It is Waste for any Tenant to convert Arable into Wood, or Meadow into Arable.

Punishment.

The Punishment in Waste is treble Damages, and Forfeiture of the Place wasted.

There is Voluntary or Actual Waste, and Permissive Waste.

How the

Action lies.

And Action of Waste lieth against a Tenant by the Courtesie, Tenant for Life or Years, half a Year, or Tenant in Dower, by him that hath the Estate of Inheritance, in any of all these Cases before-mentioned.

Guardian.

But Waste doth not lie against a Guardian in Socage, but an Action of Accompt or Trespass.

Elegit.

Neither doth Waste lie against a Tenant by *Elegit*, Statute-Merchant or the Staple; but an Action of Accompt after the Debt and Damages levied.

Waste

Ch. 6. Landlords and Tenants. 271

Waste doth not lie against a Tenant at Will. But if such Tenant voluntarily pull down Houses, or cut down Timber-Trees, or the like; in this Case the Lord may have an Action of Trespass against him, *Co. 1 par. Inst. 54.*

But against a Tenant in Mortgage, either an Action of Waste or an Account will lie against him, because his Estate is conditional. *Noy's Max. p. 33.*

If two or more Joint-Tenants or Tenants in Common, be in a House, and one will repair the House, and the other will not; in that Case, he that will repair it, may have a Writ *de Reparatione facienda.*

If a Landlord covenant to repair the House, and doth it not, in this Case the Lessee may cut Timber growing upon the Ground and repair it, though he be not compellable thereunto, and shall not be punishable in Waste for so doing.

No Man can have an Action of Waste, unless he have the immediate Estate of Inheritance; but sometimes another shall join with him. *Coke, 1 part. Inst. p. 53.*

As if a Reversion be granted to Two, and the Heirs of the One;
L 3 they

they two shall join in an Action of Waste.

In like manuer the surviving *Copartners*, and the Tenant by the Courtesie shall join in an Action of Waste.

If a Tenant for Years commit Waste and die, no Action of Waste lieth against his Executors or Administrators, for Waste done before their Time.

Copartners If there be two *Copartners* of a Reversion, and one of them die, the Aunt and Niece shall join in an Action of Waste. *Kitch. f. 244.*

Surrender. If a Tenant for Life commit Waste, and after surrender his Estate, and the Lessor accepts it; the Lessee is discharged of the Waste.

Stranger. If a Stranger commits Waste upon the Lands which one holdeth for Life or Years; the Tenant shall suffer for it, and is left to take his Remedy over, against him that did it.

Delivery of Timber. If a Landlord covenant to deliver Timber out of the same Land to repair the House let, and will not deliver it, and for Defect thereof the Tenant will not repair it, but suffers the House to fall down; this is Waste in the Tenant, and he is punishable for it.

But

But if the Timber be to be taken out of the Lands, and be not delivered, then the Tenant is excusable if he suffers the House to fall, and no Action of Waste lies against him.

If a single Woman rent Lands and marries, and her Husband commits Waste and dies, she shall be punished for this Waste done by her Husband. *By Husband.*
Idem.

But if a Lease be made to a Man and his Wife, and her Husband commits Waste and dies; in this Case, the Wife shall not be punished for such Waste, unless she agree to the Estate.

If a Woman be Tenant for her Life, and marries, and her Husband commit Waste, and the Wife dieth, the Man is not punishable for this Waste: But if a Woman be possessed of a Term of Years, and takes a Husband, who commits Waste, and the Wife dies; here the Man is liable to an Action of Waste, for the Waste by him committed, because he enjoyeth the Term of the Lease. *Coke 1 par. Inst. 54.* *Simile.*

If a Man make a Lease for Life or *Reversion* Years, and after grants the *Reversion* for Years, the Lessor shall have no Action of Waste during the Years;

for he himself hath granted away the Reversion, in respect whereof he is to maintain his Action.

Lease determined.

If an Action of Waste be brought and the Term end while it is depending, yet the Writ shall not abate: For although the Plaintiff cannot recover the Place wasted, yet he shall recover the treble Damages.

Cestui que vie.

Likewise if one be Tenant for Term of another's Life, and makes Waste, and afterwards the *Cestui que vie* dies, here the Lessor shall recover treble Damages, but cannot recover the Place wasted; for that falls to him by the Death of the *Cestui que vie*. *Co. 1 par. Inst. f. 285.*

What recovered.

If Waste be done in one Corner of a Wood, that Place only which is wasted shall be recovered: But if it be done here and there about the Wood, then the whole Wood shall be recovered, or as much wherein the Waste *sparfim* is done. *Co. 1 Inst. 54.*

And so in Houses, so many Rooms shall be recovered wherein there is Waste done.

Hedge-rows.

If a Man make Waste in cutting Trees which grow in Hedge-rows, which enclose Pastures, nothing shall be recovered but the Place wasted; that

that is, the Circuit of the Roots, and not the whole Pasture ; but if Trees grow scatteringly about the Pasture, then the whole Pasture is forfeited if they be cut. *Pract. Reg.* 654.

It is a good Plea in Bar to a Writ of *Pleas.* Waste, to say that the House fell by a sudden Tempest, although the Tenant did covenant to repair it ; but it is no Plea in an Action of Covenant.

It is also a good Plea in a Writ of Waste, to say that the House was ruinous at the Time of the Lease making, and the Timber so putrified and rotten that it fell.

It is also a good Plea, to say that the Plaintiff had entred upon the Land, before which Entry no Waste was made ; or that he surrendered, and the Plaintiff did accept, before which Time no Waste was made.

If a Tenant doth waste, and after-*Surrender.* wards surrender, and the Lessor agrees ; yet the Lessor may have an Action of Waste, and recover treble Damages. *Coke, 1 par. Inst. f.* 285.

If an Action of Waste be brought *Abate-* by Husband and Wife in Remainder-*ment.* in Special Tail, and the Wife dieth (the Suit depending) without Issue ; in this Case the Writ of Waste shall abate.

*Without
Impeach-
ment.*

If a Lease be made to hold to one without any Impeachment of Waste, the Lessee may cut down Trees, and convert them to his own Use : But if the Words be, to hold without Impeachment of any Action of Waste ; in this Case, if the Lessee cut down Trees, the Lessor shall have them. *Idem. f. 220.*

*Rent.
Charge.*

If a Tenant for Life grant a Rent-Charge, and after doth Waste, and the Lessor recover in an Action of Waste, he shall hold the Land charged during the Life of the Tenant for Life ; but if the Rent were granted after the Waste done, the Lessor shall then avoid the Grant made by the Lessee for Life. *Coke, 1 par. Inst. 223, 224.*

Release.

If a Tenant in Fee release to his Tenant for Life all his Right, yet he shall have an Action of Waste. *Idem f. 345.*

And if a Tenant in Tail make a Lease for his own Life, yet he shall have an Action of Waste.

But if there be a Tenant for Life, the Remainder to another in Tail, and he in the Remainder release to the Tenant for Life all his Right and State in the Land ; he cannot afterwards have an Action of Waste.

If

If the Grantee of a Reversion *Pleas.* bring an Action of Waste, the Lessee may plead generally, that he hath nothing in the Reversion.

If a Lessee before his Term begin *Lessee.* enters into the Lands let to him, and do an Act which amounteth unto Waste, the Lessor shall not have an Action of Waste for the same.

None shall have Judgment to recover in an Action of Waste, where the Waste comes but to 12 *d.* or such a small Sum.

If Waste be done upon Lands let *Lessee.* for Term of Years or Life, by one against whom the Lessee can have no Remedy in Law for committing the same Waste, the Lessee in such Case is not punishable for the same by the Lessor, except there be a Special Covenant in the Lease, that he shall not permit nor suffer Waste to be done. *Coke, 1 par. Inst. f. 303.*

If the House be uncovered when the Tenant cometh in, it is no Waste in the Tenant if he suffer it to fall down.

The rising of a new Frame of a House which was never covered, is no Waste. If a House fall by sudden *Sudden* Tempest, or be burnt by Lightning, *Tempest.* or destroy'd by Enemies, or the like, without any Default of the Tenant,
or

or was ruinous at his coming in, and fall down; this is no Waste.

*Re-build-
ing by Te-
nants.* And the Tenant may build the same again with such Materials as remain, and with other Timber growing upon the Ground; but he must not make the House any larger than it was, for if he do, it is Waste.

Furnace. If a Tenant fix a Furnace, and not to the Walls nor Posts of the House, if he take it away within his Term, it is no Waste.

If a Tenant in Fee fix a Furnace in the middle of the House, the Heir shall have it, and not the Executors.

If a House fall by a great Wind or Tempest, the Lessor shall have the Timber, for it is no Waste, and the Lessee is not bound to build it up again.

Relief in *Chancery* for Waste. *Vide ante.*

*Digging
Land.* Digging of Land by a particular Tenant is Waste. *Dyer* 361. *Lit. Rep.* 295.

But not if it be for bettering the Ground: Yet if a Copyholder build a new House upon part of the Land, it has been adjudged a Forfeiture; for though the Land is bettered, yet it is in another Kind. *Id.* & 22, *H.* 6.

Ch. 6. Landlords and Tenants. 229

A Lessee of Land made it a Hop-Hop-ground, and it was adjudged Waste.^{Ground.}
Lit. Rep. ibid. Altho' one Acre now was better than three before; but it was in another Kind.

To pull down a House is Waste; *Plea.* but if the Tenant build it up again before an Action brought, he may plead that specially. *1 Mod. Rep. 94.*

To pull down a Malt-Mill, and build a Corn-Mill, it's Waste. *Idem.*
Co. Lit. 53. 1 Rol. 507. 3 Rol. 815.

If a House could not be repaired *Special* without pulling it down, it must be *Plea.* pleaded specially. *1 Mod. Rep. 94.*

Waste in the House is Waste in the *What* Courtelage, and Waste in the Hall is *Waste.* Waste in the whole House. *Idem.*

To convert a Brewhouse into Tenements is Waste also, altho' they be of greater Value. *1 Lev. 309.*

As is observed before, if a Tenant make Waste in cutting of Wood *Action,* or Timber contrary to the Proviso's, *when.* Exceptions or Covenants in his Lease; for such a Breach the Landlord may bring his Action or Covenant before the End of the Term.

Now Waste is a Forfeiture, but if *Forfeiture.* a Copyholder by Custom hath been fined, or removed it, that proves that 'tis no Forfeiture; for where the Law gives

gives the Lord another Recompence, the Lord will not make a Forfeiture: And the Lord may pursue a Copyholder with Amerciaments till he pluck up a Hedge. *Lit. Rep.* 267.

Some Observations concerning the cutting, spoiling and stealing of Wood.

43El.c. 7. By the Stat. 43 *Eliz. cap. 7.* If *Cutting, stealing or spoiling of Woods, &c.* any shall be convicted by his own Confession, or by the Testimony of one Witness upon Oath, before one Justice of Peace or Head Officer, to have unlawfully cut or taken away any Grain growing, robbed any Orchard or Garden, digged up or taken any Fruit-Trees, broken any Hedges, Pales, or other Fences, cut or spoiled any Woods or Under-Woods standing and growing, or the like, or to have been accessory thereunto; he shall, within such Time as the Justice or Head Officer shall appoint, pay for the first Offence to the Party grieved so much as the Justice or Head Officer shall set down: And in case the Party offending be not able to pay it, or do it not according to Order, then the Offender is by them or either of them (respectively) to be committed to the Constable or other Officer of the
the

Ch. 6. Landlords and Tenants. 231

the Place where the Offence was committed, or the Party apprehended, to be whipp'd; and so for every Offence afterwards, and proved as aforesaid, the Offender is to have the like Punishment of Whipping.

If the Constable refuse or neglect to whip the Offender, any such Justice of the Peace or Head Officer may commit him to Prison without Bail, till he whip or cause to be whipped the Party offending, as above declared.

No Justice may execute this Statute for Offences done to himself, unless he be associated with one or more Justices of Peace, whom the Offence doth not concern: *Vide* the Statute 43 *Eliz. c. 7.* To which the Statute 15 *Car. 2. cap. 2.* has added the following Provisions, *viz.*

Every Constable, Headborough, ^{By Stat.} or other Person in every County, ^{15 Car. 2.} City, Town Corporate, or other c. 2. Place where they shall be Officers or Inhabitants, shall have Power to apprehend, or cause to be apprehended, such as they suspect for having or carrying, or any Ways conveying, any Burden or Bundles of any Kind of Wood, Underwood, Poles, or young Trees, Bark or Mast of Trees, or any Gates,

Gates, Stiles, Posts, Pales, Rails or Hedge-wood, Broom or Furze.

If any Person be suspected to have any such Woods, Underwoods, &c. any Officer, by Warrant under the Hand and Seal of one Justice, may enter by Vertue thereof into the Houses, Out-houses, Yards, Gardens, or other Places belonging to such Persons, and wheresoever they find any such, they may apprehend those Persons, and also those who are suspected to have cut and taken the same, and carry them before a Justice of the Peace of the County, City, &c. and if he in whose Custody such Wood, &c. is found, cannot give a satisfactory Answer and Proof to the Justice of his buying the same, he shall be deemed a Convict with-

Forfeiture. in the Statute 43 *Eliz.* The Forfeiture for the first Offence as the Justice shall appoint, not exceeding Ten Shillings, and Commitment to the House of Correction, or Whipping, for not performing the Justices Order; for the second Offence, House of Correction and hard Labour for one Month; for the third, to be deemed an incorrigible Rogue.

Buyers of such stolen Wood may be ordered to pay treble Value to the

the Owner, &c. to be levied by Distress and Sale; and for want of such Distress, Commitment to Goal without Bail for a Month, where he is to remain at his own Charges.

Note, No Person is to be punished by this Statute, that hath been punished by any former Law for the same Offence; nor is any Person to be questioned for any Offence within this Statute, unless within six Weeks after the Offence committed.

Note also, By a late Stat. 1 *Geo. c. 48*. If any Persons shall maliciously cut or spoil any Timber-Trees, Fruit-Trees or other Trees, the Party damaged thereby shall have Satisfaction from the Inhabitants of the Parish, and the same is to be viewed, and Damages and Costs to be recovered as in Cases of Hedges and Dykes overthrown in the Night by the Stat. 12 *E. 1*. And any two Justices where the Offence was, or the Sessions may on Complaint of any Inhabitant or the Owner, cause the Offender to be apprehended, and finally determine the Offences, and commit the Offender to Correction and hard Labour for three Months *Sans* Bail, and to be publicly whipp'd once a Month.

And if any shall maliciously set on Fire any Wood or Underwood or Coppice, he shall suffer as a Felon by the said Statute.

C H A P. VII.

*The Doctrine concerning Common of Cattle, &c. between Landlord and Tenant.**Common, what.*

COMMON signifieth, in our Common Law, that Soil or Water, whereof the Use is common to this or that Town or Lordship; as Common of Pasture, (termed *Communia Pastura*) *Brañ. l. 4. c. 19 & 40.*

Piscaria.

Common of Fishing, *Communia Piscaria. Id. l. 2. c. 34.*

Turbaria.

Common of Turbary for digging of Turves, *Communia Turbaria. Id. l. 4. c. 41.*

Estoveriorum.

Common of Estovers, *Communia Estoveriorum. Kitch. f. 94. See Estovers in Tabula.*

Division into three.

Again, Common is divided into, 1. Common in Gross; 2. Common Appendant, and Common Appurtenant; 3. Common by reason of Vicinage or Neighbourhood. *Vide Co: Lit. 121. a.*

1. Common in Gross.

Now Common in Gross is a Liberty to have Common alone, (that is, without any Land or Tenement in

in another Man's Land) to himself for Life, or to him and his Heirs, and it is commonly passed by Deed of Grant or Specialty. *Old Nat. Brev. 31 & 37. Cowel's Interp. verb. Common.*

Mr. Cowel further says, That Common Appendant and Common Appurtenant are in a manner confounded, as appears by *Fitz. Nat. Brev. f. 180.* and are defined to be a Liberty of Common appertaining to, or depending of such and such a Freehold; yet *Kitchin, fol. 94.* seems to make this Difference, That he which hath Common Appurtenant, hath it without Limitation of this or that kind of Beasts; but that this again is controlled by *Dyer, f. 70. b. Numb. 19.* And that he who hath Common Appendant, hath it but for Beasts commonable, as Horses, Oxen, Kine and Sheep, being accounted fittest for the Ploughman, and not of Goats, Geese and Hogs. Whereupon the Author of the *New Terms of the Law* addeth another Difference, which is, That Common Appurtenant may be severed from the Land whereunto 'tis appurtenant, but not Common appendant.

Original
of Common
Appen-
dent.

The Original of Common Appendant is expressed in 4 *Lib. Co. Rep. f. 34.* to this Purpose: *Viz.* That when a Lord enfeoffed another in arable Lands to hold of him in So-cage, as all Tenure in the beginning (according to *Littleton*) was; The Feoffee, to maintain the Service of his Plow, had Common in the Waste of his Lord for his necessary Beasts to gain and compost his Land, and that for two Causes: One, for that (as then it was taken) it was tacitly implied in the Feoffment, by reason the Feoffee could not gain or compost his Land without Cattle, and Cattle could not be sustained without Pasture, and so by consequence the Feoffee had, as a Thing necessary and incident, Common in the Wastes and Land of the Lord. The second Reason was, for Maintenance and Advancement of Tillage, which is much regarded and favoured in the Law.

3. Common
for Cause
of Vici-
nage.

Common for Cause of Vicinage or Neighbourhood, is a Liberty that the Tenants of one Lord in one Town have to common with the Tenants of another Lord in another Town: Which kind of Common they that challenge may not put their

their Cattle into the Common of the other Town, for then they are distrainable; but turning them into their own Fields, if they stray into their Neighbour's Common, they must be suffered. See the *Terms of the Law*, and *Cow. Interp. verb. Common*.

That if there be common by reason of Vicinage between two Manors Time out of Mind, &c. yet one may inclose against the other. *Co. Lit. 122. 4 Co. 38. b.* So it's said, if he incloses any Part of his Common, the Common *pur Cause de Vicinage* is gone. But in such a Case, if the Lord of one Manor incloses, he shall not bind a Copyholder of the same Manor, but that he may have Common for Cause of Vicinage as he had before. *Mic. 3 Jac. in Banco, per Hobert.*

Where there is Common for Cause of Vicinage between two, yet one cannot put his Cattle into the Land of the other, but they ought to escape there of themselves by reason of the Vicinity, for this is but an Excuse of the Trespass. *Co. Lit. 122.*

It was said, That every Common for Cause of Vicinage, is a Common Appendant, and that a Man for such Reason need not prescribe; but

Where either inclose.

Privilege of a Copyholder.

The Cattle ought to escape therein, &c.

Whether a Prescription ought to be Causa Vicinagii.

but that it is sufficient to say, That he and all those whose Estate, &c. have used to intercommon *Causa Vicinagii*; but yet it's doubtful, and 13 H. 7. 13. b. there is a Prescription for Common *Causa Vicinagii*. And in *Poph.* 201. *dubitatur*, whether it was sufficient that he and all the Occupiers of, &c. have had, &c.

Resolved *per Cur'*

Where one
of the Com
mons hath
but 50
Acres, and
the other
100.

That if there be Common for Cause of Vicinage between the Towns of *A.* and *B.* and *A.* hath fifty Acres of Common, and *B.* hath an hundred Acres of Common, the Inhabitants of *A.* cannot put more Cattle into their Common that the fifty Acres will depasture, without any Regard to the Common of *B.* for the Original Cause of this Common was not the Profit of either Town, but to prevent Suits in open Countries for reciprocal Escapes from one Field into the other. 7 Co. 5. b.

Shack.

As for *Shack* in the County of *Norfolk* (which is a sort of Common for Cause of Vicinage) and the Commencement thereof. *Vide* 7 Co. 5.

Before we see farther into Common Appendant, &c. it will be convenient to enquire after the Common of the Lord.

For Common as Lord.

The Lord of the Manor seised of ^{For Com-} the Wastes in which the Tenants have ^{men as} Common, may, it's said, feed the ^{Lord.} Common by part or all, of common Right without Disturbance, 18 E. 3. 43. 18 *Aff.* 4. But whether the Lord by Prescription may be restrained to a certain Number, *Vide 2 Roll. Abr.* 267. *Pla.* 2.

If the Owner of the Soil grants to ^{Upon a} another Common without Number ^{Grant sans} there, yet the Grantee cannot use ^{Number.} the Common with so many Cattle, that the Grantor shall not have sufficient Common for his Cattle. 12 H. 8. 2. *Bridgm.* 5. 1 *Roll. Rep.* 365. 1 *Saund.* 345. *Co. Lit.* 122. a. 1 *Roll. Abr.* 399. *Pl.* 5.

So where a Man claims Common ^{Upon Claim} without Number by Prescription or ^{by Pre-} Custom, for it is against the Nature ^{scription.} of the Word *Common* to exclude the Owner of the Soil, and it was implied in the first Grant, That the Owner of the Soil should take his reasonable *Profit* there. *Co. Lit.* 122. 2 *Roll. Abr.* 265. Letter L.

And tho' *per F. N. B.* 125. D. Com-Where mon without Number is not admea- ^{Lord may} surable; ^{disfrain.}

surable ; yet if the Commoner surcharges it, the Lord may distrain. *Vide* 1 Saund. 345.

*May agist
Castle.*

The Lord by Prescription may agist the Cattle of a Stranger in the Common, but without Prescription he cannot. 30 E. 3. 27.

*May lisenſe
a Stranger.*

He may lisenſe a Stranger to put in his Cattle, if he leaves ſufficient Common for the Commoners. 2 Mod. 6, 7. 275.

*May not
deſeat his
own Grant.*

And if *A.* grants Common to *B.* in a certain Place, *A.* cannot afterwards erect a Rick there ; for by the Grant the Cattle of *B.* are to range over the whole Place without Reſtraint, and it ſhall not be in the Power of *A.* to defeat his own Grant. Cro. Jac. 271, 272. int' Farmer & Hunt. *Vide* Yelv. 201, 202.

*If he alien
in Fee.*

*Saving,
&c.*

If the Lord alien in Fee the Soil where the Common is to be taken, ſaving his Power of Feeding as Lord, he ſhall have Common there as Lord. 18 E. 3. 34.

*If he alien
without a
ſaving,
&c.*

And if the Lord, without any Saving, aliens the Soil where the Common is to be taken, his Common as Lord is gone by the Feoffment ; but the Alience of the Soil may feed it as the Lord might have done before :

Ch. 7. Landlords and Tenants. 241

For that this Common is given, because it is in his Soil where the Lord has it, and not because he is Lord. *Ibid.*

Of Common Appendant.

That Common Appendant is of Common Right. 26 H. 4.

That 'tis not Common Appendant, unless it has been Appendant Time out of Mind. 40 Ed. 3. 10. b. *Mind.*
Keilw. 129 b. Bro. Com. 16. 5 Aff.

2. For such Common cannot be created at this Day. 5 Aff. 9. *Fitz. Affize 134. 26 H. 8. 4.*

That Common Appendant may *all the* be through all the Year, saving a *Year* certain Time, at what Time the *Year* Lord feeds it. 27 E. 3. 86. b.

Also it seems, that Common Appendant may be limited upon Condition. 37 H. 6. 34. *Fitz. Trespass. 85. Br. Common 13.*

That Common Appendant may *Unlimited*, be unlimited; so *quam diu* he pays &c. so much; so *tam diu* as he shall be *So tam* living upon such a House to which *diu, &c.* the Common is Appendant. *Ibid.*
ut supra.

M

So

After Corn severed, till, &c. So Common Appendant may be to common after the Corn is severed 'till it is re-sowed, 37 *H. 6.* 34. And if Part only is re-sowed, he may common in the Residue. *Yelv.* 185. 2 *Brownl.* 189. *Br. Common* 13.

After Hay carried, till, &c. So it may be to common in the Meadow after the Hay carried, 'till Candlemas. 17 *Eliz.* 3. 26. b. 34.

So it may be to common in the Pasture from the Feast of St. *Augustin* to *All-Saints*, &c. *Ibid.*

For two Years after, &c. So it may be to common two Years after the Corn cut and carried away, 'till it is re-sowed, and *Until, &c.* every third Year *per totum Annum.* 22 *Aff.* 42. *Vide* 1 *Saund.* 343, 344

In two Places. That a Man may have Common Appendant for thirty Cattle in one Place, and to the same Land, Common Appendant also in another Place for Part of the said Cattle, and so may take it where he pleases. 17 *Ed.* 3. 34. b.

Until Land re-sowed by Consent. That a Man may prescribe for Common in certain Lands from the Time the Corn is severed, until the Land shall be sowed again by the Assent of the Commoners; for by the Law the Owner cannot plough where another hath Common. 1 *Leon.* 73. *int'* *Hawks* and *Molineux.*

Ch. 7. Landlords and Tenants. 243

So a Man may prescribe for Pastu- ^{For two}
 rage for two Geldings in a thousand ^{Geldings}
 Acres of Meadow, from the first ^{in 1000}
 Day of *May*, till the Grass be there ^{Acres.}
 cut and made into Hay ; for being
 in so great Quantity of Land, the go-
 ing of two Geldings there cannot so
 defoul or debruisse it, but that Hay
 may well be made thereof. *Cro.*
Jac. 27. ini' Sir John Thomas and Las-
sels.

It ought to be Appendant to ara- ^{To what it}
 ble Land, but not to other Land ^{may be Ap-}
 which is not arable, nor to a House : ^{pendant.}
 Neither can it be Appendant to Land
 which is approved within Time of
 Memory out of the Waste of the
 Lord : Neither can Common of Tur-
 bary be Appendant to Land. *26 H. 8.*
44. 5 Aff. 2. 9. Br. Com. 13. 16. Fitz.
Affize 134.

Also it ought to be for such Cattle ^{For what}
 as plough his Land (to which it is ^{Cattle,}
 Appendant as it seems) and compester
 it, viz. Horses and Oxen to plough
 the Land, and Cows and Sheep to
 compester it. *37 H. 6. 34. Br. Com.*
13. Co. Lit. 122.

But he may not use it with Goats, ^{What not.}
 Geese, or such like, for these are
 not necessary to do *ut supra.* *37 H. 6.*
34. Br. Com. 13.

Not for all manner of Cattle. And therefore a Prescription to have Common Appendant for all manner of Cattle is not good, because it comprehends Goats, Geese, and such like; but this is Common Appurtenant. 37 H. 6. 34. Br. Com. 13, 14. 1 Roll. Abr. 401. pl. 2.

Common admeasurable. Again, the Common is admeasurable according to the Quality and Quantity of the Freehold, to which he claims to have this Common Appendant. 37 H. 6. 34. Br. Com. 13. *Vide postea* concerning Admeasurement.

For how many Cattle. *Viz.* For all those which are levant and couchant upon the Land, 15 Ed. 4. 32. b. 11 H. 8. 12. Br. Com. 8.

Levant and Couchant. And per Noy 30. *dubitatur*, what Cattle shall be levant and couchant; but there said, That the Chief Justice in the Circuit held for so many Cattle as the Land to which, &c. may maintain in the Winter, shall be said levant and couchant. *Vide*

What shall be said Levant and Couchant. 1 Vent. 54. And that so many Beasts may be said levant and couchant upon a House as may be tied there, and are usually to be maintained in the House. 2 Brownl. 101. But per Vaugh. 253. in a common Intent, Cattle cannot be levant upon a Messuage only.

That

Ch. 7. Landlords and Tenants. 245

That he who claims Common by ^{By Inhabi-} Force of a Prescription, as an Inha-^{tant of a} bitant of a Town, shall have no other ^{Town.} Cattle to common there, but what are levant and couchant within the same Town. 15 E. 4. 32. b Br. Com. 8. for there is no Diversity between this and Common Appendant. See after.

That Common Appendant may ^{May be li-} by Usage be limited to any certain ^{mitted.} Number of Cattle. 17 E. 3. 27. 34. b.

Generally the Commoner cannot ^{By whose} use the Common but with his own ^{Cattle.} proper Cattle. 11 H. 6. 22. b. Fitz. Com. 3. Br. 47. 22 Aff. 84. Br. Com. 40. Fitz. Affise 228.

If the Commoner hath not any ^{By borrow-} Cattle to manure the Land, he may ^{ed Cattle.} borrow other Cattle to manure it, and may use the Common with them, for by the Loan they are in a manner made his own Cattle. 45 E. 3. 26. 11 H. 6. 22. b. 14 H. 6. 6. b. 22 Aff. 84. Br. Com. 5. 14. 406. Br. Seisin 5. Fitz. Com. 3. 47. Fitz. Tres. 33. Fitz. Aff. 228.

He cannot agist the Cattle of a ^{May not} Stranger. 11 H. 6. 22. a. 11 b. 22. Aff. agist, &c. 84. Fitz. Com. 3. Br. 40, 47. Fitz. Aff. 228.

Strangers If he takes the Cattle of a Stranger to fold, and folds them accordingly, being Levant and Couchant upon the Land, he may use the Common with these Cattle, for he has a special Property in them for the Time. *Mich. 10 Car. B. R. int' Jason and Hellyard, per Cur'.*

Grantable ever. Where Common is grantable over or not. *Vide Roll. Abr. 46. pl. 15, 16.*

Upon Claim as an Inhabitant. If a Man as Inhabitant of a Town, claims Common for all manner of Cattle in a Place, and claims the Common by reason he is an Inhabitant there, he shall have no other Beasts to common there but those that are Levant and Couchant: And

Grants sans Number. If a Man grants *sans* Number, the Grantee cannot put in so many Cattle, but so that the Grantor may have sufficient Common in the same Land. *12 H. 8. 2 15 E. 4. 32. b.*

By reason of a Man's Person. That a Man may prescribe to have Common for all manner of Cattle by reason of his Person. *15 E. 4. 33. Br. Com. 8. Vid. 1. Roll. 366, 398. Br. Com. 48.*

Void, not saying Levant and Couchant. But if a Man claims Common by Prescription for all manner of commonable Cattle in the Land of another, as belonging to a Tenement, this it's said is a void Prescription, because he does not say it is for Cattle Levant

Levant and Couchant upon the Land to which he claims it to be Appurtenant, for a Man cannot have Common *sans* Number Appurtenant to Land; and when he claims the Com-^{Upon Com-}mon for all Cattle commonable, and ^{mon sans} does not say for Cattle Levant ^{Number.} and Couchant upon the Tenement, this shall be intended Common *sans* Number, according to the Words; for there is not any Thing to limit it, when it does not say for ^{What shall} Levant and Couchant; adjudged in ^{be so in-} Error, *int' Colham and White, Mich.* ^{tended.}

14. *Car. Rot.* 403, 404.

Said to be naught upon a general ^{Helped af-}Demurrer, but that is helped after ^{ter Verdict,} Verdict. *Int' Cheadle and Miller. Vide* 1 *Lev.* 196. 1 *Saund.* 227, 346. 1 *Vent.* 164, 165. 1 *Mod.* 6, 7, 75. 3 *Mod.* 162. *Co. Ent.* 656. *Cro Jac.* 44.

But if a Man prescribes for Com-^{Need not}mon for a certain Number of Cat-^{say Levant}tle, as belonging to certain Land, ^{and Couchant.} he need not say Levant and couchant. 2 *Mod.* 185. See the Diversity adjudged, and 1 *Roll. Abr.* 401. *pl.* 4. 1 *Vent.* 163. 1 *Mod.* 75. *Cro. Jac.* 27.

It is doubted whether a Corpora-^{In Gross by}tion may prescribe, That every Bur-^{a Corpora-}gefs of the said Corporation hath ^{tion.} Time out of Mind had Common

in Gross sans Number in a certain Place for all their Cattle, *int' Miller and Spateman. 1 Saund. 345, 346.* And that the Chief Justice positively said, There could be no Common in Gross sans Number. *Vide 1 Mod. 6, 7. dubitatur.*

How the Prescription ought to be. But 2 *Jon. 115. 2 Lev. 246.* in an Action between the same Parties for a Disturbance in the Usage of the Common, it seems to have been adjudged a good Prescription. *Vide Hard. 111.* Yet *vide Co. Lit. 122.* this is one of the Commons there enumerated: And 3 *Mod. 290. arguendo* admitted, but said, The Prescription must not be laid to be *ad libitum suum. Et vide March, 83.*

In a Forest. Prescription for Common *omni Tempore anni* in a Forest, &c. and it was not found to be a Forest. *Hard. 87.*

Pro omnibus Equis, magis feasant. If in a Bar to an Avowry for *Dabus Equis,* the Defendant prescribes for the Common in the Place where *good for Geldings.* &c. *pro omnibus Equis, &c.* and so justifies the putting in his Gelding there. This is a good Plea, for *Equus* is a general Name, and comprehends Geldings as well as Horses, and Geldings in common Speech are called Horses, but for Mares it

Ch. 7. Landlords and Tenants. 249

is not so adjudged, Cro. Eliz. 798.
int^r Stapleton and Morfe:

If in Bar of an Action of Trespass *Common* the Defendant pleads, that he, and *claimed by* all those whose Estate he hath in the *the Name* Manor of M. have Time out of *of Pastu-* Mind had Pasturage for two Geld-
ings in the Place where, and so ju-
stifies, this is a good Plea; for such
Common may be claimed by the
Name of Pasturage; adjudged, Cro.
Eliz. 27. *inter Sir John Thornhill and*
Lassels.

If a Man in Bar to an Avowry *Prescriptia* for *Damage fesant* prescribes, That *on for Com-* he, and all those whose, &c. have *men pro* had Common *pro Magnis Averiiis* (for *Magnis* great Beasts) in the Place where, *Averiiis.* &c. and so justifies his putting in the Geldings to use the Common; this is a good Plea: For *Magna A-*veria may well be intended Horses Oxen, Kine, or such other Beasts of these Kinds which are Common-able, and by the common Phrase of People are well known amongst them, and there needs no Averment that the Gelding was one of the *Magna Averia*; adjudged, Cro. Jac. 580: *int^r Standred and Shoreditch.*

*Magna
Averia,
what.*

But whether a Man may prescribe for Common *pro Magnis Averiiis*, viz. *pro Bidentibus*, &c. 1 Saund. 227. *dubitatur*. And the Chief Justice said, Sheep were great Beasts in respect of Conies, &c.

*Sheep and
Yearlings.*

Vide 2 Roll. Rep. 173. where the Case of *Standred* is adjudged, and there said, That all manner of Cattle, except Sheep and Yearlings, should be called *Magna Averia*.

*Common
Appurte-
nants of E-
stovers.*

If a Man hath Time out of Mind had Common of Estovers in a certain Place to be burnt in such a House, and to mend the old Houses and old Hedges; this is not Common Appendant, but Appurtenant. 11 H. 6. 11. b.

*Appurte-
nant to a
House.*

And if a Man and his Ancestors, and all those whose Estate he hath in a House, have had Common for two Beasts in a certain Place; this also is not Appendant, but Appurtenant. 11 H. 6. 12.

*Grant by
Deed, how
Appurte-
nant by
Reference,
&c. to an
after Act.*

Upon a Grant of Common by a Deed of Bargain and Sale of *Black-acre*, which Deed is afterwards in-
roll'd; this was held a good Com-
mon Appurtenant to *B.* although the
Grantee had nothing in the Land at
the Time of the Grant; and though
it shall not relate to settle the Estate
in

in him *ab initio*, inasmuch as this has Reference to the Bargain and Sale, and to the Estate which he had by Force thereof. *Mich. 15 Jac. B. R. inter Gawen and Stacy.*

And so it is where the Grant of ^{To an after} Common had Reference to that ^{Purchase.} which a Man should afterwaads purchase; for it is not necessary that he should have the Land at the Time of the Grant. *Ibid.*

So if a Man bargains and sells ^{To the In} *Blackacre* to *B.* and after before the ^{rolment of} Deed is inroll'd; by another Deed ^{a Deed.} grants a Common to the said *B.* for all the Cattle which should manure and eat the said *Blackacre*, and after the Deed is inroll'd; this shall be a good Common Appurtenant to the said *Blackacre*; and the Court said it should be so without any help of Relation. *Int' easdem Partes ut supra.*

So where a Man grants to *B.* ^{To a com-} Common for all his Cattle which ^{tingent} manure *Blackacre*, and after he pur- ^{Estate} chases it; this was said to be a good Common Appurtenant to this Acre upon a Contingent, though he had nothing in it at the Time, *Et c. int' easdem Partes ut supra*; but here is made a *Quare*, inasmuch as the Grant had no Reference to a future Purchase.

chafe. *Vide* 1. *Roll. Abr.* 400. pl. 5, 6.

To Land in
another
Place.

H. seised in Fee of a Waste called *W. Heath*, granted to the Prior of *S.* and his Tenants in *S.* Common in *W. prad'*, *Habend* to them and their Successors as Tenants in Fee; and this was said to be Common Appurtenant to the said Land which the Prior had in *S.* aforesaid, for that it could not be a Common *sans* Number, but referred to the Land. *Inter Sacheverell and Porter*, 1 *Roll. Abr.* 400. pl. 7. *Cro. Car.* 482. 1 *Jones* 297. Adjudged upon a special Verdict.

Common in
Gross.

One granted to another a certain Assart with Common of Turbary, as belonged to two Hides of Land with the Appurtenances in *D.* and this was said to be a Common in Gross, being a Grant *de Novo*, not by Prescription, and not Appurtenant to the said Assart; adjudged, 5 *Aff.* 9. *Fitz. Affize* 134.

Grant de
Novo.

Common
extinguish-
ed and re-
vived.

If *A.* as Appurtenant to a certain Messuage, and twenty Acres of Land, hath Common in the Land of *B.* and after *B.* enfeoffs *A.* of the said Lands, in which, &c. by which the Common is extinguished; and after *A.* releases to *B.* the said Messuage and twenty Acres of Land, with all
Com-

Commons, Profits and Commodities thereunto appertaining, or occupied, or used with the said Messuage: This is said to be a good Grant of a New Common for the Time. *Trin. 39 Eliz. int' Bradshaw and Eyer. Cro. Eliz. 570.*

But because it was not there averred, that this Common was there-^{Averment} of Use, with used at the Time of the Lease, it was adjudged against the Defendant who claimed the Common.

So if a Copyhold Messuage el-^{So of a Co-}cheats, to which before Common in^{pyhold that} the Demesne of the Lord did belong, ^{of cheats.} and the Lord by Deed grants it by the Name of a Messuage, &c. and of whatsoever Common to the said Messuage belonging, &c. or with the same used. *2 And. 168. Cro. Eliz. 794.*

If a Man prescribes to have Com-^{Wood not}mon of Estovers to his Freehold, ^{scil. appur-} a House, he cannot prescribe to sell ^{want to sell.} the Wood, for this cannot be Appurtenant. *11 H. 6. 11. b. Vide Noy 145.* but must shew they are to be burnt or spent in the House. *1 Sid. 354.* but he may prescribe to build new Houses. *Cro. Jac. 25.*

But to burn, So a Man may prescribe to have
&c. as much Turf yearly as two Men
 can dig in one Day, 1 *Lev.* 231.

Common A Man may prescribe to have
Appurte- Common Appurtenant to a Manor
nant to a for all manner of Cattle. 14 *H.* 6. 6.
Manor. b. and it is noted to be there said,
 Common Appendant, which cannot
 be. *Vide* 1 *Roll. Abr.* 401. *Let. M. pl.*
 2. *Fitz. Tres.* 33. *Br. Com.* 14.

So to a Free- So a Man may prescribe to have
hold. Common Appurtenant to his Free-
 hold for all manner of Cattle. 20
Aff. 8. *Br. Com.* 41.

To a Fold- A Man may prescribe that he
Course for and all those whose Estate he hath
300 Sheep. in the Manor of *D.* have used to have
 a Fold-Course, *scil.* a Common of Pa-
 sture for Sheep not exceeding three
 hundred, in a Field, *scil.* C. Field,
 as Appurtenant to the said Manor;
 tho' he does not prescribe to have
 them Levant and Couchant upon the
Levant and said Manor, there being a certain
Couchant. Number limited. *Mich.* 11 *Car. B. R.*
int' Day and *Spooner.* *Vide ante* for how
 many Cattle. *Term. Mich.* 6 *Car.*
Rot. 183.

For Hogs, That a Man may prescribe to
Goats, &c. have Common Appurtenant for his
 Cattle not commonable; as Hogs,
 Goats, and such like. *Co. Lit.* 122.

That

7. **Ch. 7. Landlords and Tenants.** 255

That a Man may prescribe to ^{At every} have Common Appurtenant to his ^{Season.} Freehold for all manner of Cattle, at every Season of the Year; adjudged, 25 *Aff. 8. Br. Com. 41.*

That a Man may prescribe to have ^{For Hogs} Common Appurtenant for Hogs ^{Levant,} Levant and Couchant upon such Land. &c. *Mich. 5. Jac. per Cur.*

How Common Appurtenant may be used.

He that hath Common Appurtenant, cannot agist the Cattle of a ^{How be} Stranger. 13 *Ed. 3. 37.* ^{may not} agist.

But he may borrow Sheep of another to compester his Land, and with ^{May bor-} these he may use the Common. 14 *H. 6. Fitz. Tresp. 33. Br. Com. 14.* ^{row Sheep.}

That a Man may use a Common ^{With what} Appurtenant to his Manor with Cat- ^{Cattle.} tle that are for his Household. *Ibid.*
Vide 1 Roll. Abr. 401. Let. N. pl. 2, 3. Br. Com. 14.

But he cannot use the Common ^{What not.} with Cattle that are to sell. *Ibid.*

Of Common in Gross.

Common Appendant cannot be ^{Not from} made Common in Gross, for this is ^{Common} for Cattle Levant upon the Land, to ^{Appendant.} which.

No Seque-
rance.

which, &c. and therefore it cannot be severed without Extinguishment. 9 E. 4. 39. 26 Hen. 8. 3. Cro. Cur. 542. That it may not by Grant be severed from the Soil,

Not from
Common
Appurte-
nant.

So Common Appurtenant for Cattle Levant and Couchant upon the Land, cannot be made in Gross for the aforesaid Cause. Newil 384. 19 H. 6. 33. 6 Br. Com. 33. But that Common Appurtenant for a certain Number of Beasts may be granted over. Cro. Jac. 14. per Cur' adjudged that it could not by Grant be severed from the Land, because he had it only *sub modo*, viz. for Beasts Levant, &c.

May be
granted
over.

May in
Gross by a
Grantor.

If A. and all those whose Estates he hath in the Manor of D. have had Time out of Mind a Fold-Course, *scil.* Common of Pasture, for any Number of Sheep not exceeding 300, in a certain Field, as appurtenant to the said Manor; he may grant over this Fold-Course to another, and so make it in Gross, because the Common is for a certain Number; and by the Prescription, the Sheep are not to be Levant and Couchant upon the Manor: But it is a Common for so many Sheep Appurtenant to the Manor, which may be severed

For a cer-
tain Num-
ber.

from

Ch. 7. Landlords and Tenants. 257

from a Manor as well as an Ad-^{Which may}
 vowson without any Prejudice to ^{be severed.}
 the Owner of the Land where the
 Common is to be taken. *Mich. 11 Car.*
B.R. int' Day and Spooner. Cro. Car. 432.
1 Jon. 375. 1 Roll. Abr. 432. pl. 4. intr'
Mich. 6 Car. Rot. 183.

But there the Case was, whether ^{May be}
 it might be granted over with Par-^{Granted}
 cel of the Manor, and so should be ^{over with}
 appurtenant to this Parcel? And it is ^{a Parcel.}
 adjudged *in Banco*, that it should pass
 as appurtenant to this Parcel, and so
 held *per Cur'.* in *B. R.*

That a Man may prescribe to ^{For what}
 have it for all manner of Cattle. *15 E. Cattle.*
 4. 33.

The Grantee of Common for a ^{Not of a}
 certain Number of Cattle, cannot ^{Stranger.}
 common with the Cattle of a Stran-
 ger. *18. E. 4. 14. b.*

If a Lord licenses a Stranger to ^{Upon the}
 put his Cattle into the Common, ^{Lord's Li-}
 this shall be intended of commona-^{cence.}
 ble Cattle only, and not of Hogs.
2 Mod. 7. but if the Licence be for
 a particular Time, 'tis otherwise. *Ibid.*

If in an Action of Trespass brought
 by a Commoner against a Stranger
 for putting his Cattle into the Com-
 mon, whereby he could not have
 Common in so large a manner; and
 the

*In plead-
ing a Li-
cence, must
aver SUFFI-
cient left.*

the Defendant pleads a Licence from the Lord to put his Cattle there, but does not aver there is sufficient Common left for the Commoners. This is no good Plea; though it may be objected, the Plaintiff may reply thereunto, yet being the very Gift of the Action, the Defendant should have pleaded thereto: Adjudged *int Smith and Feverel. 2 Mod. 6.*

*Must shew
the Sur-
charge.*

But in Action against the Lord, the Plaintiff must particularly shew the Surcharge.

*By whose
Cattle.*

If a Commoner have no Cattle, he cannot agist the Cattle of others to use the Common. 45 E. 3. 25. b. Br. Com. 5. Br. Seisin 5. 22 Aff. 84. Br. Com. 40. Fitz. Aff. 228.

*Not of Te-
nants at
Will.*

So he cannot command his Tenants at Will, to use it with their Cattle in his Name. *Ibid. ut supra.*

*By borrow-
ed Cattle.*

But if he borrow other Cattle to manure his Land, he may use the Common with them, for they are in a manner his Cattle by borrowing; and the Cattle which manure the Land, of Right ought to have Common. 45 E. 3. 25. b. 22 Aff. 84, &c. *ut supra.*

*Appendant
and not
Gross.*

If a Man at all Times hath used Common with his Cattle Couchant and Levant in certain Places, and
not

not with other Cattle coming; this is Common Appendant to this Place, and not in Gros. 22 Aff. 36. 13 Co. 66.

Br. Com. 23.

If a Man grant Common to another ^{What shall} ther for Years, and do not declare ^{be a good} in what Place he shall have it, this ^{Grant.} is void. 9 H. 6. 36. Br. Grant 5.

If a Man grants to another ^{Ubicunq;} Common ^{ubicunque} ^{Averia sua ierint;} (wheresoever his Cattle went) this ^{Averia sua ierint.} is a good Grant by Averment, in what Place his Cattle fed at that Time of the Grant, before or after. 9 H. 6. 36. Br. Grant 5. Fitz. Com. 2. Br. Com. 3. But without such Aver-^{Benefit by} ment, this is no good Grant. 9 H. 6. ^{Averment.} 36.

Again, if a Man make such a ^{Where no} Grant as above, yet if the Cattle of ^{Benefit by} the Grantor did never feed in any ^{the Grant.} Place before the Grant, or at the Time of the Grant or after, the Grantee shall have no Benefit of the Grant. Ibid. Br. Com. 5.

But if he grants Common in that ^{Upon a} manner, and after he occupies and ^{future Oc-} manures 100 Acres of Land with his ^{cupation} Cattle, and after he becomes so poor ^{by the} that he hath no Cattle; yet the ^{Grantor.} Grantee shall have the Common in the 100 Acres. Ibid.

So

*So as or
after the
Grant,
in any
Place.*

So upon such a Grant, if the Grantor, at the Time of the Grant or after, feeds his Cattle in any Place, the Grantee may common there also. *9 H. 6. 36.*

*So Ubi-
cunque
Averia
ierint.*

So upon such a Grant of Common, *ubicunque Averia* of the Grantor *ierint*, if the Grantor puts his Cattle in his Garden or in his Corn, the Grantee may put his Cattle there also. *Ibid.*

*Quere if
the Gran-
tor dies.*

But if there be such a Grant, and the Grantor dies, 'tis made a *Quere*, If the Grantee shall have Common after his Death? *Ibid.*

*Of Common
throughout
the Manor.*

And if a Man grants Common to another for all his Cattle throughout his Manor, yet he cannot common in the Garden of the Grantor's Parcel of the Manor, but only in such Places where a Man of common Right ought to common. *Ibid.*
Br. Com. 5.

*How con-
strued.*

But upon such Grant he may common in any reasonable Part of the Manor, tho' not Waste or Common before; adjudged, *Cro. Car. 599.* For by the Grant there is no Restraint to the Waste or Commons.

*Quando-
cunque
Averia sua
ierint.*

Again, if a Man grant Common to another, *quandocunque Averia sua* *ierint*, (whensoever his Cattle should go), the Grantee shall not have

Com.

Common, but when the Cattle of the Grantee are in the Common: 9 H. 6. 36. Fitz. Com. 2. Br. 3. Br. Grant 5. Hob. 40. cited and agreed. Cro. Car. 599. but objected, that the Clause, *Quandoevenque, &c.* is void, ^{How in-} because it restrains all the Effect ^{of} intended, &c. the Grant. Resp. *econtra*, for *Modus & Conventio, &c.* And it is not intendable, the Grantor will forbear to put in his own Cattle to defraud the Grantee of his Common. *Vide* 1 Rep. 87.

If one grants Common to another ^{Where it} in his Land, every Year that it ^{may be at} lies fresh; this is good, though it be ^{the Gran-} at my Will, whether he shall have ^{tor's Will.} any Profits, for I may sow it. 17 E. 3. 34. b.

And if A. grants Common to B. ^{Where the} in certain Land for all his Cattle, ^{Intention} which shall be Levant and Couchant ^{and Limi-} upon Black-Acre, where B. hath no ^{tation must} thing in Black-Acre, so that it can ^{be obser-} not be appurtenant; yet this shall ^{ved.} not be a Common in Gross, because the Intention and Limitation of the Grant is to Cattle Levant and Couchant. Agreed int' Gawen and Stacy. Trin. 15 Jac. B. R.

That

*Upon a
Grant in
two several
Places.*

That a Man may grant to another, Common in one Place for all manner of Cattle, and in another Place for ten Beasts; and so the Grantee may put the ten Beasts in either of the two Places. 17 E. 3. 34. b.

Seisin of Common, how obtained, &c.

*Not by a
tortious
User.*

A tortious User of Common cannot put one in Seisin. 45 E. 3. 25. b. Br. Com. 5. Br. Seisin 5. 22 Aff. 84. Br. Com. 40. Br. Seisin 36. Fitz. Aff. 228.

Not by Tenants at Will.

As a Commoner cannot get Seisin by Cattle which he agifts, for such User is not lawful; so he cannot gain Seisin by the User of his Tenants at Will being his Servants with their Cattle, by his Command, in his Name, for their User with their Cattle is tortious. *Ibid. ut supra.*

Seisin delivered by the Tertenant.

But if the Commoner hath no Cattle, and so takes the Cattle of another, and the Tertenant delivers Seisin to the Commoner, and is present when the Cattle are put in, and he assents to the User and Putting in, or commands him so to do; this is a good Seisin. 45 E. 6. 26. 22 Aff. 84. Br. Seisin 36.

Ch. 7. Landlords and Tenants. 263

So if the Commoner hath no ^{By the Cat-} Cattle, he may take Seisin by the ^{tle of ano-} Cattle of another, and chase them ^{ther, how.} back presently; for the Continuance is tortious, and this is said to be a good Seisin. 45 E. 3. 26. Br. Seisin 5. Br. Com. 5. But Br. Com. 51. 'tis made a *Quære*, and this seems not to be Law, for the putting them in without Continuance, is tortious. ^{Tortious.} 22 Aff. 24. Br. Com. 40. Br. Seisin 36. Fitz. 228.

If a Man hath Common *sans* Num- ^{Upon Com-} ber, if he hath been seised of this ^{mon sans} with Cattle, without any certain ^{Number.} Number, as 20, 30 or 40, this is said to be a good Seisin. 11 H. 6. 23.

That if a Man recovers a Com- ^{Delivered} mon, and the Sheriff upon a Writ ^{by the She-} of Seisin comes to the Place, and by ^{riff by Pa-} Parol delivers to him Seisin of the ^{rol.} Common; this is a good Seisin of the Common to have an Affise. 22 Aff. 84. Bro. Seisin 36. Fitz. Affise 228.

Where the Seisin of the Father is ^{Upon Seisin} not sufficient for the Heir. 45 E. 3. ^{of the Fa-} 25. Br. Seisin 5. 22 Aff. 84. Br. Sei- ^{ther.} fin 36. Fitz. Affise 228.

But the Seisin of Lessee for Years ^{Upon Seisin} of a Common, is sufficient for him ^{of a Lessee} in Reversion. 45 E. 3. 26. 22 Aff. 84. ^{for Years.} Fitz. Aff. 228. Br. Seisin 36.

What

What Things a Commoner may do.

General Learning thereof. For the Interest and Power of a Commoner, and the general Learning thereof; *Vide Bridgm.* 10, 11. *Godb.* 123, 124. 2 *Leon.* 201, 202.

May make Gaps. Where he may make one or more Gaps to put in his Cattle, if the Common be enclosed. *Vide Goldf.* 117. *Lit. Rep.* 38. 2 *Inst.* 81.

Throw down Hedges. May throw down the Hedges. 2 *Mod.* 65, 66. 1 *Brownl.* 228.

Let out Water. If the Lord makes a Pond in the Common, the Commoners may let the Water out. 1 *Brownl.* 288.

Upon the Lord's making Cony-Burrows. If the Lord of a Common makes Cony-Burrows in the Common, and stores them with Conies; though he hath no Warren, yet the Commoners cannot justify the killing the Conies, that they may not increase to the Prejudice of the Common. Adjudged int' *Hodson and Griffel*, *Mich.* 5 *Jac. B. R.* *Vide Godb.* 123, 124. 2 *Bulst.* 116. *Yelv.* 105. *Cro. Eliz.* 876. *Cro. Jac.* 229, 230. 1 *Brownl.* 227. 2 *Leon.* 201. 4 *Leon.* 7.

But may bring their Affize or Action. Again, if the Lord of a Common makes Cony-Burrows in the Common, and stores them with Conies, by which the Commoners cannot have

have sufficient Common; yet the Commoners cannot justify the killing the Conies, but ought to bring their Assise or Action against the Lord, for they cannot be their own Judges: *Sed dubitatur*. So *Bridgman* 9, 10, 11. *Dubitatur*, Whether a Commoner may prescribe to kill the Conies, so often as the Common hath been oppressed. *Vide Cro. Jac.* 195. and *Yelv.* 104, 105. where the Case of not Killing is said to be adjudged. So *Godb.* 123. *Cony's Case*. So 2 *Leon.* May not, 201, 202. and 4 *Leon.* 7. adjudged, though no other Remedy. though it should be admitted the Commoner hath no other Remedy. *Cro. Jac.* 229, 230.

But it seems, every one of the Copyhold Commoners, by Prescription against the Lord, (if the Lord stores the Waste with Conies) may have an Action of the Case against the Lord, averring that by this his Common is impaired. 1 *Roll. Abr.* 106. Pl. 19. 405. Pl. 2. And that an Action lies, notwithstanding the King grants to the Lord a Free Warren there. 8 *Jon.* 12. *Winch.* 16. *Palm.* 319. And accordingly, *Yelv.* 143. it was adjudged in an Action by the Heir of the Commoner, for the Continuance in his

N Time.

Time. *Vide Cro. Jac. 195. Telv. 104. 105, &c. Sed vide 1 Lut. 108.*

*May not
dig and
stop up the
Holes.*

Again it's said, That if the Sheep of the Commoners are killed, by falling into the said Cony-Burrows so made by the Lord; yet they cannot justify the digging of the Land, and stopping them for the Cause aforesaid. *Trin. 11 Jac. B. R. sed dubitatur. 2 Bulst. 115, 116. adjudged. Cro. Jac. 229, 230.*

*May not
kill the
Conies.*

If *J. S.* hath Land adjoining to the Land of *J. D.* in which *J. N.* hath Common of Pasture, and *J. S.* makes Cony-Burrows in his Land, and stores them with Conies, which come into the Land of *J. D.* *J. N.* who hath the Common of Pasture, cannot there kill the Conies, because he hath nothing to do there, but to take the Grass with the Mouth of his Cattle. Adjudged, *Mich. 43 & 44 Eliz. B. R. int' Bellowe & Loughden. Vide 1 Roll. Abr. 90. pl. 9. Cro. Eliz. 876.* The Action being brought by *J. D.* adjudged; for the Cony is a Beast of Warren, and profitable as Deer are, and not to be compared to Vermin. *Owen 114. Cro. Jac. 195. Telv. 105. 2 Bulst. 116. 1 Lutw. 108.*

*Cony a
Beast of
Warren.*

Mich

Mich. 10 Car. Adjudg'd int' Eversly See where
 and *Wilkinson, in B. R.* Such a Com- it's said he
 moner brought an Action upon the may kill
 Case against *J. S.* who, without any the Conies.
 lawful Grant or Prescription, had
 stored the Land adjoining with Co-
 nies, by which the Conies came into
 the Land where he had Common,
 whereby he lost his Common; and
 adjudged that the Action does not
 lie, and a Judgment given *in Banco*, But cannot
 reversed accordingly in this Case have an
 in a Writ of Error; and the Court Action.
 gave the Reason, because here the
 Commoner may kill the Conies.
Vide Cro. Car. 387. 1 Roll. Abr. 90.
contra. 1 Jon. 356. same Case ad-
 judged, and the Judgment reversed
 accordingly.

A Commoner may justify the ta- Justificati-
 king the Cattle of a Stranger Damage
sefant upon the Common in his own on of taking
 Name, for the Interest which he has Cattle Da-
 in the Common. mage se-
 15 *H. 7. 2. b. 11,* fant.
 13. *b. 14 H. 7. 3. b. Co. 9. Mary's Case,*
 112. *b. F. N. B. 128. c. 10 Ed. 4. 4.*
 15 *H. 7. 13. b. agreed.*

But he can have no Action, un- How he
 less laid, *per quod* his Common was may lay
 impaired. *Kelw. 47. a.* But for this an Action.
vide 2 Co. 112, 113. 1 Brownl 197.

2 Brownl. 55. 1 Roll. 89. pl. 8. Br. Com. 35, 39. Br. Justification 15.

*Action by
Commoner
upon dig-
ging Turf.*

And if a Copyholder, by the Custom of a Manor, has used to have Common for all his Cattle Levant and Couchant upon his Customary Tenement, in a certain Place, Parcel of the Manor, and a Stranger digs Turfs there, and carries them away, by which his Common is impaired; an Action upon the Case lies, declaring, That the Defendant dug so many Turfs there, and them with his Horses and Carts (the Grass then and there growing, treading down with his Feet in Walking) from the Place aforesaid unjustly did take and carry away, whereby the Plaintiff could not have his Common for his Cattle in so beneficial a Manner as before he had; and this is said to be a good Declaration Though the Commoner cannot have any Damage for the taking and carrying away of the Turf; yet the coming upon the Land with his Horses and Carts to carry them, is a Prejudice to the Common. And there, *per quod* his Common is impaired, is the Cause of the Action, and the carrying and taking them is a Means of the Impairing thereof. *Mich. 9 Car.*

*How he
must de-
clare in
Case.*

*What is
the Cause
of such
Action.*

inter

Ch. 7. Landlords and Tenants. 269

inter Teary & Godier, adjudged. This being moved in Arrest of Judgment upon such a Declaration, the Damages being entire. *Holland and Lovel* a like Point. 2 *Brownl.* 148. 9 *Co.* 113. *Co. Ent.* 9. pl. 8. 14. pl. 12. *Godb* 343. 2 *Roll. Rep.* 308 *adjournatur*.

That Trespass lies against a Stranger, for suffering his Horses, &c. to eat &c. the Grass, whereby he could not have his Common in so beneficial a Manner. 9 *Co.* 11. 2 *Brownl.* 55. *Jenk. Rep.* 144 By which Book, though the old Opinions are otherwise, yet an Action will lie, else the Commoner may be without Remedy; for the Cattle may be gone before he can take them *Damage* *esant*. But he shall not have an Action for every petit Trespass; but for such only, whereby he could not have his Common in such a beneficial Manner. 9 *Co.* 113. 1 *Brownl.* 197. *Br. Common* 24. *Kelw.* 47. 1 *Roll. Abr.* 405. pl. 5.

If there be a Custom, that a Close ought to lie fresh, and hained every second Year till *Lady-day*, after the Corn cut and carried away, and *J. S.* hath used Time out of Mind to have Common in the said Close after *Lady-day*, till it is sowed again

N. 3.

with.

How he must declare upon Trespass by a Stranger's Cattle.

Not for every little Trespass.

Where the Lord puts in his Cattle contrary to Custom.

*Commoner
may take
them Da-
mage fe-
fant.*

with Corn, for his Cattle Levant and Couchant upon a certain Tene-ment, as appurtenant thereto: In this Case, if the Lord of the Soil of the said Close puts in his Cattle in the said Close against the Custom, when it ought to lie fresh and hained: By the Custom, the said *J. S.* tho' he be but a Commoner, yet he may take the Cattle of the Lord there *Damage fesant*, and justify it in an Action of Trespass brought against him by the Lord of the Close where he took the Cattle; for it will be the worse Common, if the Lord may eat the Grass before the Common is to be taken by the Custom. *Mich. 14 Car. inter Trulock and White*, adjudged, this being moved in Arrest of Judgment.

*So where
the Lord
is stinted to
a Number.*

So where the Lord by Custom is stinted to a certain Number of Cattle, and yet he puts in more. *Yelv. 129. Vide Cro. Jac. 208. 1 Brownl. 187, 188.* In which Case some of the Judges doubted, whether as the stinting the Lord was gained by Custom, a Custom and Usage to distrain ought not to be alledged; but how far the Lord may be restrained to a certain Stint, *vide 2 Roll. Abr. 267. Let. L.*

'Tis

vant
 ene-
 In
 Soil
 attle
 tom,
 ain-
 7. S.
 yet
 ord
 y it
 ght
 lose
 it
 the
 the
 u-
 nd
 ed
 is
 it-
 9.
 7,
 ne
 t-
 n,
 n
 v
 a
 %.
 s

But the Commoner may justify *Where he*
his coming to see if the Pasture in *may*.
it be fit to receive his Cattle. *Pasc.*
17 *Fac. B. R.*

If *A.* hath Common of Estovers ^{Where} in the Woods of *J. S.* and *J. S.* ^{Commoner} cuts part, or all the Wood; yet *A.* ^{of Estovers} cannot take any Part of this which ^{may not} is cut, but shall be put to an Affise ^{take Wood} or Case, as his Estate is. *P. 17 Jac. Grantor.*
B. ut supra. Vide Cro. Eliz. 826. Cro. Jac. 257. 1 Roll. Abr. 567. Pla. 3. Yelv. 188. 1 Brownl. 197, 200. 1 Bul. 93, 94. Vide 9 Co. 112. 1 Brownl. 197. 1 Roll. Abr. 108. Pl. 22. 5 Co. 25.

So if one grants to me 1000 Cords *or if cut*
of Wood to be taken at my Ele- *by a Stran-*
ction, and the Grantor or Stranger *ger.*
cuts down all or part of the Wood,

I can take no Part of that which is cut down. 5 Co. 25. Sir *Tho. Palmer's* Case. *Cro. Eliz.* 820. *Noy* 32. *Moo.* 692. *Pl.* 955. *Yelv.* 188.

Where he may take Thorns out. But if a Man claims all the Thorns, &c. growing in such a Place, he may take them, though cut down by another. *Cro. Jac.* 257. *Yelv.* 188. 1 *Brownl.* 219, 220. 1 *Bulst.* 93, 94.

Where a Common is surrounded with Water. If a Common every Year in a Flood is surrounded with Water, yet the Commoner cannot make a Trench in the Soil to avoid the Water, because he has nothing to do with the Soil, but only to take the Grass with the Mouth of the Cattle. 12 *H.* 8. 2. 13 *H.* 8. 15. *D.* 36 *H.* 8. 36. *b.* 39. *Vide* 2 *Bulst.* 116. *Bridgm.* 10. *Godb.* 52.

Where he may not cut Bushes, Fern, &c. So the Commoner cannot cut Bushes, Fern, &c. which impair the Common, (*Bridgm.* 10.) unless it be by special Prescription; for if he makes any Thing *de novo* in the Land, he is a Trespasser, but he may amend and reform a Thing abused. And therefore, if the Land be full of Mole-Hills, he may dig them down. 1 *Brownl.* 228. So if there be Holes dug in the Common to the Damage of the Land, they may

May dig down Mole-Hills.

may

Ch. 7. Landlords and Tenants. 273

may put again the Earth dug into its Place.

Approvement of Common, concerning it.

By the Order of the Common *Not by* Law, there be no Approvement, *Common* because the Common issued out of *Law*; the whole Waste. 2 *Inst.* 85.

By the Common Law, the Lord *unless by* might approve against any that *Common* had Common Appendant, but not *Appendant* against a Commoner by Grant. 2 *Inst.* 474. 1 *Roll. Rep.* 365.

By the Statute of *Merton*, cap. 4. *By the Statute* because great Men having enfeoffed *tute of* others of small Tenements in their *Merton* great Manors, complained they could not make their Profit of the Residue of their Manors, as Waste, Woods and Pastures: It was provided, when such Feoffees bring an Assise for their Common of Pasture, *Inquest upon an Assise* and it is alledged they have not sufficient Pasture belonging to their Tenements, Ingress or Regress, the Truth shall be enquired by the Assise; and if found they have not sufficient, &c. they shall recover Seisin by the View of the Inquest, *Seisin recovered* and by their Discretion shall have sufficient, &c. but if found they have

Profit of the Residue. sufficient, &c. the other shall make the Profit of the Residue, and be quit of the Assise.

20 H. 3. This Statute was made 20 H. 3. See the Explanation thereof, 2 *Inst.* 85, 86. *Vaugh.* 257.

How Statute extends, &c. That it extends only to enable the Lord to approve against his Tenants, 2 *Inst.* 85. So it may be tried in an Action of Trespass. 2 *Inst.* 88. *Godb.* 117.

Upon Lords Inclosure. Or if the Lord inclose any Part, and leave not sufficient Common in the Residue, the Commoner may break down the whole Inclosure. 2 *Inst.* 88.

Not to a Piscary, &c. It extends not to Common of Piscary, Turbary, Estovers, &c. 2 *Inst.* 87.

Not to Common in Gross. It extends not to Common in Gross. *Idem* 86.

Lord may approve the Residue. When tis found they have not sufficient, the Inquest shall find what is sufficient, that the Lord may approve the Residue. 2 *Inst.* 88. And though after it should prove insufficient, the Improvement continues. *Id.* 87, 88. See after.

By Inclosure. The Improvement is to be made by Inclosure, and not by digging for Coals, &c. 2 *Inst.* 87. 1 *Sid.* 106.

And

And if the Lord make a Feoffment of Part, his Feoffee may in-^{By a Fe-offee.} close; for the Peoffment in its Nature was an Improvement. 2 *Inst.* 17.

And thereby 'tis discharged of ^{Purchase} the Common, and if the Tenant ^{by Tenant.} purchase it, his Common is not extinguished. *Ibid.*

But the Lord cannot improve the whole, leaving them sufficient in ^{May not approve all.} other Lands. 2 *Co.* 25. b.

By the Statute of *Westm.* 2. cap. 46. ^{Stat.} the Statute of *Merton* shall bind ^{Westm.} Neighbours, and such as claim Com-^{construes} mon of Pasture appurtenant to their ^{Stat. of} Tenements; but not such as claim ^{Merton.} Common by special Grant or Feoffment, for a certain Number, or otherwise.

A Neighbour is bound, though ^{How Neigh-} he dwell in another Town, so the ^{bours are} Town and Commons adjoin. 2 *Inst.* ^{bound.} 474.

And if the Lord hath Common in ^{Where the} the Tenants Ground, the Tenants ^{Tenants may} may improve within this Act. *Ibid.* ^{improve.} And yet there seems as if the Common of the Lord was reserved upon the first Feoffment. *Ibid.*

That by Occasion of a Windmill, ^{Concerning} Sheep-cote, Dairy, enlarging of a ^{Windmills,} Court necessary for Curtlage, none ^{Sheep-cotes} shall &c.

shall be grieved by Affise of *Novel disseism* for Common of Pasture.

*House for
a Beast-
keeper.*

Note, It's said, these above are but for Examples ; for the Lord may erect an House for the Habitation of a Beast-keeper. 2 *Inst.* 476. 1 *Lev.* 62. And it must be shewn that it was done for his necessary Reliance. *Vide* 1 *Sid.* 97. 1 *Keb.* 283, 314. and whether of a necessary Curtilage it should be an ancient one, *dubitatur*.

*Though not
sufficient
left:*

And none in such Cases shall be grieved, though there be not sufficient of Common left. 1 *Inst.* 476. 1 *Lev.* 62.

*Upon levy-
ing Dykes
and Hedges,
&c.*

And where any having Right to approve, levies Dyke or Hedge, and it is thrown down in the Night or other Season, &c. And it cannot be known by Verdict of Affise or Jury by whom, and the Men of the Towns near will not indict such as are guilty of the Fact ; the Towns near adjoining shall be distrained to levy the Hedge or Dyke at their own Costs, and to yield Damages.

*Reparation
and Da-
mages.*

It is said, That the cutting down of Timber is not within the Act. *Raym.* 487.

*Publick
Proster-
nation.*

That if the Prosteration in the Day or Night was before the Face of the Owners, or so publick, that the

Ch. 7. Landlords and Tenants. 277

the Offenders may be known; it is not within the Act. 1 Lev. 108. 2 Traverse taken accordingly.

For the Inquisition and other Proceedings upon this Act, *vide Cro. Car. &c.*

280, 440, 580. 1 Jon. 307. 1 Sid. 107, 212. 1 Lev. 108. 1 Mid. 66.

And no Time being appointed for the Indictment, it's said it shall be intended within a Year and a Day.

2 Inst. 476. 1 Roll. Rep. 365. Per Cro. Car. 440. a convenient Time.

That the Lord shall bring his Action upon this Statute against the Towns bordering round about the Town where the Fact was done; and Judgment shall be given, That they shall at their proper Cost make the Ditch, &c. 2 Inst. 477. 1 Roll. Rep. 365.

And per 3 Ed. 6. c. 3. the Statutes of Merton and Westminster are confirmed, and treble Damages given to the Commoners that recover in such Affise against the Lord.

Admeasurement of Common.

Concerning the Admeasurement of Common, and where it lies, *videlicet.*
F. N. B. 125.

It

*By a Com-
moner.* It lies by one Commoner against another; but if the Tenant surcharges the Common, the Lord shall not have a Writ of Admeasurement against the Tenant. *Ibid. A. D.*

*For a Com-
mon Ap-
pendant.* *Per 2 Inst. 86.* It lies only for and against such as have Common Appendant. But *Q. & vide F. N. B. 125. D. 1 Roll. Rep. 365.*

*All admea-
sured.* Upon the Suit of one Commoner against another, it's said all the Commoners shall be admeasured. *F. N. B. 125. B.*

*Not against
the Lord.* So if the Lord surcharge the Common, or approve without leaving sufficient, the Tenant shall not have a Writ of Admeasurement against him, but an Affise. *F. N. B. 125. D.*

*Not against
Commoner
sans Num-
ber.* That no Writ of Admeasurement lies against a Commoner *sans* Number, nor shall his Common be admeasured; *Ibid.* But the Tertenant may distrain his Cattle. *1 Saund. 345.*

Forest. *Vide 1 Lutw. 98.* That one may prescribe for Common in a Forest for Sheep in the Fence-Mouth, but may not prescribe for Goats. *Idem 81.*

*Agreement
for enclo-
sing the
Common,
decreed to
be performed* in Chancery. An Agreement for enclosing the Common, and sharing it among the Parties, decreed to be performed; but decreed also, That if there were any

any Persons who had Interest in the said Common, who were not Parties to that Agreement, they should not be prejudiced thereby; provided that it should not be in the Power of one or two wilful Persons to oppose the publick Good. *Cases in Chancery, 1 Par. f. 48. Thirveton against Collier.*

Where one has a Right of Com-
mon in a common Field, from the
Time the Grain is carried off until
it is sown again; the sowing of a
small Parcel of such Field shall not
oust the Commoner from taking his
Common in the Residue of the
Field. *Mich. 8 Jac. 1. B. R. Trulick
and Riggesby. Telv. 185.*

C A H P. VIII,

Several Observations upon the Statute 29 Car. 2. which was made to prevent Frauds and Perjuries, and relates to Bargains in buying and selling Goods and Chattels.

*Bargain of
Goods above
10 l.*

FIRST, It is to be observed, That no Leases, Estates or Interests, either of Freehold or Terms of Years, or any uncertain Interest (not being Copyhold or Customary Interest) of, in, to or out of any Messuages, Manors, Lands, Tenements or Hereditaments, shall be assigned, granted or surrendred, unless it be by Deed or Note in Writing, signed by the Parties so assigning, &c. or their Agents thereunto lawfully authorized by Writing, or by Act or Operation of Law:

Also, that no Contract for the Sale of any Goods, Wares, Merchandizes, for the Price of Ten Pounds Sterling, or upwards, shall be allowed to be good;

Goods delivered.

Except the Buyer shall accept part of the Goods so sold, or actually receive the same. Or

8. Ch. 8. Landlords and Tenants. 281

Or give something in Earnest to *Earnest.*
bind the Bargain, or in Part of Pay-
ment :

Or else that some Note or Me- *Note or Me-*
morandum in Writing of the said *memorandum.*
Bargain be made and signed by the
Parties to be charged by such Com-
tracts, or their Agents thereunto law-
fully authorized :

And if so done, the Action for
the Money may be brought any
Time within Six Years; (or after Six
Years, if an original Writ be sued
out within Six Years.)

Also, That no Action shall be *No Per-*
brought upon any Agreement that *formance*
is not to be performed within the *after a*
Space of one Year from the making *Year.*
thereof :

Nor whereby to charge any Exe- *No Execu-*
cutor or Administrator upon any *tor to an-*
special Promise to answer Damages *swer, &c.*
out of his own Estate :

Or whereby to charge the Defen- *Nor one for*
dant upon any special Promise to *the Debt of*
answer for the Debt, Default, or *another.*
Miscarriage of another Person :

Or to charge any Person upon *Nor upon*
any Agreement made upon Confi- *Conf. of*
deration of Marriage. *Marriage.*

Or upon any Contract or Sale *Or Con-*
of Lands, Tenements, or Heredita- *tract of*
ments, *Lands.*

ments, or any Interest in or concerning them :

*Unless a
Note or
Memoran-
dum.*

Unless the Agreement upon which such Actions shall be brought, or some Memorandum or Note thereof, shall be in Writing, and signed by the Party to be charged therewith; or some other Person thereunto by him lawfully authorized.

*Agreement
not to deli-
ver with-
in a Year.*

So that if the Agreement be for Goods, Wares, or Merchandize, under the Price of Ten Pounds; yet if by that Agreement they be not to be delivered within a Year,

*Void with-
out Wri-
ting.*

That Agreement seems to be void, unless put in Writing, and signed by the Party to be charged thereby.

*Earnest
there will
not bind.*

And though Earnest be given upon such an Agreement, not to be performed within a Year, it seems it will not help.

*Receipt of
Part will
not bind
for the Re-
mainder.*

Also if the Contract be for Goods, &c. above Ten Pounds; and though Earnest be given, or Part of the Goods received; yet if the Remainder be by such Contract to be delivered after a Year, this Contract (unless put in Writing, and signed) it seems it will not bind for the Remainder. *Sed quare.*

And,

Ch. 8. Landlords and Tenants. 283

And so if the Agreement or Promise be to do any other Thing or Things that are not to be performed in a Year's Time from the making, it will not be binding, unless such Note or Memorandum be made.

But if no Day is set, or the Time is uncertain, as to pay so much at the Day of Death, &c. it is otherwise; for it does not appear but that might happen within a Year.

Again, if any Person promises to pay the Debt of another Person, or to answer for the Default or Miscarriage of another Person:

As if he should say, Trouble not such a Man, and I will pay you the Debt he owes you :

Or, Trust such a one, and if he don't pay you, I will :

Or, If he don't do such a Thing, I'll make you Satisfaction.

These Promises, as aforesaid, without a Note or Memorandum under Hand, will signify nothing, though it was at his Request, and though you may alledge and shew a good Consideration for it.

Also, if the Agreement be upon some Consideration of Marriage ;

Upon Consideration of Marriage.

As,

Example. As, I will give you so much if you will marry my Daughter or Kinswoman, &c.

Here the Marriage is made the Consideration, and so void without Writing.

Exception. But to say, I will give you so much for such a Horse at the Day of my Marriage; this is otherwise, and good without Note: For the Horse, in this Case, is the Consideration of the Promise.

About Sale of Lands, &c. And if it be about the Sale of Lands, Tenements, or Hereditaments, or any Interest therein, it must be put in Writing under Hand as aforesaid.

Example. As if a Man promise to sell you such a House, Piece of Lands, or the like:

Or to make a Lease for Years, or Life, of any Lands or Tenements: 'Twill not bind without Writing, &c.

To charge an Executor or. And lastly, not to charge any Executor or Administrator upon any special Promise to answer Damages, &c.

Example. As if an Executor or Administrator says to one that is about to sue him for Money owing by the Testator, &c. Forbear your Suit, and I will pay your Debt. This Promise will

will not bind to make him answer Damages of his own Estate, unless it be put in Writing under Hand, &c.

Therefore every Agreement not to be performed within a Year. 1.

Every Agreement with an Executor concerning the Testator's Estate; 2.

Every Agreement to pay the Debt, &c. of another Person; 3.

Every Agreement, where Marriage is the chief Consideration; 4.

Every Agreement concerning the Sale of Lands, &c. must be put in Writing, and signed by the Party to be charged. 5.

So that in the Particulars above-named, it is absolutely necessary that there be some Note or Memorandum to make good such Contracts, Promises and Agreements. *Caution.*

Note, That by Stat. 7 Jac. 1. 12. Shop-Book. None keeping a Shop-Book, his Executors or Administrators, shall be allowed to give it in Evidence for Wares or Work above one Year before the Action brought, unless they have obtained a Bond or Bill for the Debt, or brought an Action for the Money within one Year next

next after the Wares delivered, or Work done

But this Act is not to hold Place between Merchant and Merchant, Tradesman and Tradesman, or Merchant and Tradesman, for any Thing falling within the Compass of their mutual Trades and Merchandize.

Concerning Notes promising Payment.

It may here be observed, from Statute 3 & 4 *Annæ*, c. 9. That all Notes signed by any Person, &c. whereby any such Person, &c. shall promise to pay another Person, &c. or Order or Bearer, the Money mentioned in such Note, shall be construed to be, by Vertue thereof, due and payable to such Person, &c. to whom the same is made payable.

*Notes as-
signable
over.*

And also, such Note payable to such Person, &c. or Order, shall be assignable over, in manner as Inland Bills of Exchange are. And the Person to whom such Money is payable, may maintain an Action for the same, as they might upon such Bill of Exchange. And the Person, &c. to whom such Note so payable, or Order, is assigned or endorsed,

Ch. 8. Landlords and Tenants. 287

may maintain an Action against the Person, &c. who signed, or any who indorsed the same, as in Cases of Inland Bills, and recover Damages *Damages* and Costs of Suit: And in case of *and Costs*. Nonsuit or Verdict against Plaintiff, the Defendant to recover Costs against the Plaintiff.

See more in the Statute concerning Drawing, Accepting and Protesting Inland Bills.

C H A P.

C H A P. IX.

*Several necessary Matters relating to Farmers, and such as keep and feed Sheep, and other Beasts ; as also relating to Actions for Nu-
sances done by one Tenant to another, &c.*

None to take above two Farms. **B**Y 25 H. 8. 13. None shall receive or take in Farm for Term of Life, Years, or at Will, by Indenture, Copy of Court-Roll, or otherwise, any more Houses or Tenements of Husbandry, whereunto any Lands are belonging, in Town, Village, Hamlet or Tithing within this Realm, above the Number of two such Holds or Tenements, and they are to be situate in the same Parish where he dwells, on pain to forfeit to the King and Informer three Shillings and four Pence for every Week he takes the Profits of them.

How by Spiritual Persons. By Stat. 21 H. 8. 13. No Spiritual Person shall take to farm to himself, (or to any other for his Use) any Lands or other Hereditaments for Life, Years, or at Will, on Pain to

forfeit ten Pounds for every Month he so continues the same, to be divided betwixt the King and the Prosecutor.

But this Act not to extend to any Spiritual Person, for taking any Archbishopricks, Bishopricks, Abbies, Priories, or Collegiate, Cathedral, or Conventual Churches; nor to any such Person who shall tender, or make any Traverse upon any Office concerning his Freehold.

The said Act also provides, That ^{Parsonage or Vicarage.} no Spiritual Person shall take in Farm any Parsonage or Vicarage, on Pain to forfeit 40 s. for every Week that ^{Forfeiture.} he or any other for his Use so occupies the same, and also ten Times the Value of the Profit or Rent that he makes thereof; both which Forfeitures are to be divided betwixt the King and the Prosecutor. *See after.*

Also by 25 H. 8. 13. None shall ^{Sheep keeping.} keep in his own Possession, at any one Time, above two thousand Sheep, on Pain to forfeit for every Sheep kept above that Number 3 s. 4 d. to be prosecuted for a Subject within one Year, and for the King within three; but here Lambs shall not be accounted as Sheep till *Midsummer* Twelvemonth after their Fall.

Exception.

And if any happen to have more Sheep than two thousand, by reason of any Executorship or Marriage, they shall not be impeached by this Law, so that in one Year after they put off so many, that at the End of the Year they may not have above two thousand: Neither shall a Child, during his Nonage, (nor any Person for him) be endamaged by this Act, which Child shall have by Legacy above two thousand Sheep given him.

Exception.

But every Temporal Subject may keep (upon his own Demesne Lands) as many Sheep as he will, or for the Maintenance of his House, above the Number of two thousand, notwithstanding this Act.

*Sixscore**pro Cent.*

A thousand Sheep meant by this Statute, shall be accounted after the Rate of Sixscore to the Hundred.

Fine.

Justices of Peace have Power to hear and determine the Offences committed against this Act; but shall not take a less Fine than is limited by the same.

*2 & 3 P.**& M. c. 3.**Sheep-
feeders.*

And by the Statute of 2 & 3 P. & M. c. 3. Whosoever shall feed above one hundred and twenty shorn Sheep for the most Part of the Year upon his Grounds, which be several and

apt

apt for Milch Kine, and not Commonable, and shall not for every sixty Sheep keep one Milch Cow; *To keep* and moreover, for sixscore Sheep *Cows.* yearly rear one Calf during the Time of keeping such Sheep, shall forfeit to the Queen and Informer for every Cow not kept, for every Month 20 s. and as much for every Calf not reared.

Also, whosoever shall feed upon *Beast.* his several Pastures above twenty *feeders.* Oxen, Ronts, Steers, Scrubs, Heifers, Kine, and shall not for every ten Beasts keep one Milch Cow, and for every two Kine wean and rear up yearly one Calf (except it die) shall forfeit as before; the Suit to be commenced within one Year after the Offence committed, and not to bind such as keep Sheep, or feed Beasts for their own Provision. Justices in their Sessions have Power to hear and determine the Breach of this Statute.

The Stat. 27 H. 5 6. provides for the keeping of Mares in Parks.

And 23 H. 8. 13. is made against keeping Stoned-Horses (under size) upon Forest or Common Ground.

*Several Actions on the Case, necessary
to be known by all Farmers, &c.*

*Stopping up
a Way.*

If one disturb another in his Way to a House or Land, by stopping or straitening of it, or stop or turn his Water coming to his House, Mill or Ground, or the Light to his House, or if one stop a Ditch or River, or set up Flood-gates, so as to make the Water overflow and drown his Ground adjoining, he may have an Action of the Case against him for it. *See after, High-way, Private-way, &c.*

*Turning off
Water.*

But if a Man stop or turn Water only to mend his Banks or Mills, having by Custom or Use done it, this is justifiable. 4 Co. 86. 1 Co. 50. *Lit. Rep.* 267. 1 *Vent.* 274. 2 *Vent.* 138, 185, 288, &c.

*Drowning
another's
Ground.*

If one stop a Stream of Water and put it out of its old Course, and by that Means my Ground is drown'd, I may have an Action. *New Book of Entries, f. 18. Dyer 248.*

*Diverting
Water
from a
Mill.*

Where I have an ancient Mill, and an ancient Watercourse to maintain it, if any Man shall divert it that I cannot have the Use of it to my Mill as formerly, I may have an Action

Ch. 9. Landlords and Tenants. 293

Action on the Case against him.

Style's Rep. 370. 4 Co. 86. *Vide* 3 Lev.

133. 1 Mod. Rep. 48.

If one disturb me in my Walk, *Disturbing*
Fold, or Foldage, Watering-place, *Walk or*
Church-way, or High-way, Isle or *Foldage,*
Seat in the Church, or any other *&c.*

Profit appendant which I have had
Time out of Mind, as belonging to

my ancient House by Prescription,

I may have an Action. 4 Co. 32, 89.

5 Co. 1. 76. 12 Co. 105. 1 Bulst. 47,

69. 2 Bulst. 14, 129. Benl. 89.

Action lies for not folding Sheep *For not*
on the Plaintiff's Land, whereby the *folding his*
Plaintiff lost the Benefit of Foldage. *Sheep.*

2 Vent. 138.

If one disturb me in my Common, *Disturbing*
that I cannot have it as liberally as *Common.*

formerly I have had, an Action lies.

Style's Rep. 164. 1 Cro. 390. *Hetl.* 143.

If one dig a Pit in a Place where *Digging a*
I have Common, by Occasion where- *Pit there.*

of my Beast there going falls in it

and is hurt, I may have an Action.

2 Cro. 158. 1 Vent. 295.

If one inclose Land which should *Inclusing*
lie open in a Manor, by which the *Common.*

Commoners have not enough for to

Common their Cattle, or eat up the

Common so much that the Common-

ers have not enough; in this Case

it's said every Commoner may have his Action against him. *F. N. B.* 145. 9 Co. 113.

*Watering-
place.*

If the Inhabitants of a Parish have a Watering-place by Prescription, and be disturbed in it, each of them (as it seems) may have an Action for such Disturbance. 27 H. 8. 27. *Finche's Ley*, 177.

*Executor
of Lessee
sued.*

If the Lessor out me that am an Executor of the Lessee for Years, or my Executors after me, of the Term, each may have an Action on the Case, or an *Eject. Firma*. 4 Co. 94.

*Lessor bin-
dred to
view.*

If the Lessee keep out his Lessor coming to view his House; if any Waste be done, the Lessor may have an Action against him. 2 Cro. 478.

*Lessee for
Life a-
gainst Les-
see for
Years,*

If a Lessee for Life make a Lease for Years, and the Lessee for Years commits Waste for which the Lessee for Life is punished; in this Case he may have an Action against the Lessee for Years, and recover as much as the Lessor doth or may recover of him. *Pasch.* 38 Eliz. B. R. *Genmie's Case*.

*Lessee a-
gainst Les-
see for*

So if the Lessee for Years of a House lease it for Part of the Time, and that Time expire, and the Lessee continue in full Possession, and pull down Part of the House, the first

Ch. 9. Landlords and Tenants. 295

first Lessee may have an Action of the Case against him. *Trin. 6 Car. 1. B. R.*

If my Lessor that is bound by Lessor's Law to repair my House, or to pay Neglect is Subsidies, or the like, neglect it, and pay, &c. I suffer thereby, I may have an Action on the Case against him. *Dyer 36. pl. 37. 21 H. 7. 12.*

So the Lessor may have this Action against his Tenant at Will, for voluntary Waste committed by him; but not for negligent or permissive Waste. *Co. 5. 13. Dyer 121. 14 H. 8. 12.* and therefore it has been adjudged, That where Tenant at Will suffered the House to be burnt by the negligent Custody of his Fire, this Action would not lie against him. *Cudlip and Rundle, Trin. 2 W. & M. Rot. 646.*

But an Action on the Case lies against Tenant by *Elegit*, who holds *Elegit* over, or cuts Trees after the Money tendred. *21 E. 3. 16.*

If the Lord cut down the Copyholder's Trees without his Leave, (or else a special Custom of the Manor to enable him to it) the Copyholder may have Case against the Lord for it. *Mich. 3 Jac. B. R. Cross and Abbot; and Trin. 17 Jac. by Justice*

Haughton, and this notwithstanding he leave the Loppings of them.

Simile.

Also, if the Lord cut down any Tree of his Tenants that is to have the Lops, and take it away, *Cafe lieth.* 1 *Brownl.* 97, 231.

Simile.

If the Lord cut down all the Copyholder's Trees, and not leave him Fire-wood, &c. Tenant may have *Cafe* against him. *Brownl. ibid.* 141, 197, 298. 2 *Brownl.* 57, 331.

*Refusing
to grind.*

If the Tenant refuses to grind at the Lord's Mill, as hath been used Time out of Mind, *Action* lieth against him. 1 *Vent.* 167. 2 *Vent.* 292. 1 *Saund.* 215.

*Damage
by Fire.*

For voluntary firing his House, whereby my House is burnt, *vide Benl.* 153. and 3 *Lev.* 359.

See the late Act at the End of this Treatise.

*Not repair-
ing Fences.*

If one be Time out of Mind to repair a Hedge between my Close and his, and he let it be unrepaired, that my Cattle go into his or other Men's Ground, or other Men's Cattle go into my Ground, by reason of which I have *Damage*, I may have *Action* of the *Cafe* for it. 2 *Cro.* 669. 20 *Jac. B. R.* See 1 *Vent.* 264, 274, 275.

Ch. 9. Landlords and Tenants. 297

So if one be to repair or scour a Ditch, and do it not, by which my Land is drown'd, or I have any special Damage, Case lieth against him. *Not scouring Ditches, &c.*
F. N. B. 93. G. 11 H. 4. 28. Action, &c. 30, 34, 36.

If one be to repair a Wall, or Bank of a River, and do it not, or doth it not sufficiently, whereby my Land is drowned, I may have an Action *sur le Case.*

But in these Cases, and such like, I must aver some special Damage to me, by the not doing thereof. *Special Damage. Trin. 20 Jac. B. R. 2 Bulst. 280.*

Also an Action of the Case will lie for me against him which ought to repair a Mound or Bank of the Sea, or of any great River, and doth it not, by which my Land is drown'd So of the Bank of a River. *Sea-Bank, &c.*
29 Ed. 3. 32. 12 H. 4. 7. 15 Ed. 4. 18.

Note, But if the Breach and Inundation be by any extraordinary Accident, as by Tempest, or the like, no Action lieth. *Accident.*
10 Co. 139.

If the Highway be to be repaired, by any special Person, and is not, and I have any special Damage thereby, I may have Case for it. *Highway.*
5 Ed. 4. 3.

If there be a Charge upon any Man, by reason of the Tenure of his House, *Private Way not repaired.*

House or Land, to repair any private Way, Bridge, Gutter, or the like, and he doth it not, and thereby I have any special Damage, Action lieth against him. *Old Book of Entries, f. 10.*

House not repaired.

So I may have an Action on the Case against one for not repairing of a House ready to fall on my House. 22 H. 7. 98. Pl. 4.

Disturbance by an Upper-Room.

If one have a Room over me in a City, or other Place, and so carry himself in it as to annoy me that am under him; as if he have a Shop or Warehouse over me, and I have a Cellar under it, and he lay such an extraordinary Weight of Goods more than usually have been, and so break it down upon me, I may have Case against him for it. *Poph. 46.*

Damage by an Under-Room.

If I have a Building beneath, and another Man a Building above me, and I suffer mine to decay so as to hazard his, or he suffer his to decay so as to hazard mine, each of us may have an Action on the Case against the other. *Keilw. 48. See 1 Brownl. 4.*

Over-building.

If a Man doth over-build my House, so that his House-Eaves do drop upon my House, and cause it to perish, or trouble my Dwelling, I may have

have Action on the Case against him.

14 Brownl. and Goldsb. 4.

If a Man set up a House upon a *Lights and* new Foundation so near to my an-*Windows* cient House, that thereby he stops *Stopping* up my Windows and takes away my Light, the Air and Prospect, I may have an Action on the Case. For a Man may not in London, or else London, where, enlarge his House in Breadth or Length to stop his Neighbour's Light; but upon an ancient Foundation he may build it as high as he will; for *cujus est solum, ejus est usque ad Cælum*. 5 Co. 10. 9 Co. 55, 56. See after; and see the Act. for Re-building London.

If a Man shall build or set up a *Wall, Wood* Wall against the Window or Light pile, &c. of my House, I may have an Action against him, albeit he build upon his own Ground. So if he set up a Wood-pile upon his own Ground to stop up Lights, I may have an Action. 9 Co. 54: 5 Co. 108. But if it prevent my Prospect only, no Action will lie for this. Co. 8. 57. 1 Mod. Rep. 55. Raym. 87. 1 Sid. 167.

But if two Men be Owners of *Contiguous* two Parcels of Land adjoining, and *once of* one of them build a House on his *Lights and* Land, *Windows*.

Land, and make Windows and Lights looking into the other's Lands, and this continueth thirty or forty Years, the other may build or lay any Thing upon his own Land, and stop them. 1 Cro. 118, 129. 1 Bulst. 116.

*Wrong
purged.*

If one House be built hanging over another wrongfully, and after they come both into one Hand, the Wrong is now purged; so that if after they come into several Hands, neither Party is to complain of the Wrong done before. Hob. 173.

*Nuisance by
Dye-houses,
&c.*

Note, The erecting of a Dye-house, Tan-house, Brew-house, or Lime-kiln, may be a Nuisance to a Neighbourhood, by which if I have any considerable Offence in the Smell to my Health, or by the Smoke to our Bodies that live in the House, or to Trees of the Garden or Yard, I may have an Action of the Case for my Relief. Pasc. 5 Jac. B. R. 5 Co. 73, 101, 108. 9 Co. 54.

*Setting up
a Pig-sty,
&c.*

So if one set up a Pig-sty under my House, and keeps Pigs in it, or a House of Office, and use it so near to my House that the Smell thereof doth annoy me, and hazard my Health, &c. I may have an Action. 5 Co. 73, 101, 108. 9 Co. 54.

So

Ch. 9. Landlords and Tenants. 301

So the keeping of a Chandler's or ^{Chandler's} Butcher's Shop so near my House, in ^{Shop.} a Place inconvenient, to the Offence of me in my Garden or House, may be such a Nuisance for which I may have an Action. *New Book of Entries, f. 11. Trin. 13 Car. B. R. 5 Co. and 9 Co. ut supra.*

But if such a Man shall set up his ^{Offensive} Trade by me, though this be offen- ^{Trade.} sive to me, by the laying of stinking Heaps at his Door, and the like, I can have no Action for this, unless it be very great and much offensive. *1 Cro. 367. 13 H. 7. 26.* yet this is indictable.

If one throw a Beast dying of the ^{Dead Car-} Murrain, or the Intrail or Offal ^{cass's, &c.} or it into my Ground, whereby my Beasts are infected and die, I may have Case against him. *Style's Rep. 50.*

If one set out his Tithes duly, and ^{By Tithes.} the Parson will not take them away in convenient Time, Action lies.

So if one that hath bought Hay ^{By Hay.} on my Ground, or in my House, and suffer it to lie long whereby I am damaged. *Godb. Rep. pl. 424. Et sic de similibus. Quar.*

C H A P. X.

Some further Observations relating to Covenants in Leases, &c. With several modern resolved Cases relating to Pleadings in Covenants upon Leases.

Also concerning the late Act of Parliament, to prevent Destruction of Houses by Fire, and new building of Houses within the Bills of Mortality.

Quiet Enjoyment.

A Covenant is either expressed in the Deed, or implied by Law, as by the Words *Demise* or *Grant*, the Law doth imply and intend that the Lessee shall quietly enjoy, during the Lessor's Life. 4 Co. 8. *Dyer* 338.

Affirmative or Negative.

A Covenant may be in the Affirmative or in the Negative, and it may be executed, that is of a Thing already done; executory, *i. e.* of a Thing that shall be done hereafter: But if it be of a Thing present, it may be void; as if I covenant that my House is yours, this is void. *Blowd.* 330.

Cove-

10. Ch. 10. Landlords and Tenants. 303

Covenants made by Deed Poll ^{By Deed} are as good and effectual as those ^{Poll} made by Deed indented, so as the Party have the Deed to shew; but Covenant doth not lie upon a verbal Agreement, neither can it be grounded without a Writing, except by some special Case, as in London. 3 Co. 63.

There needs no great Formality ^{Words of} in the Words to make a Covenant; ^{Covenant.} for if the Words of a Deed run thus, *That the Lessee shall repair, provided always that the Lessor shall allow Timber;* or, *That the Lessee shall scour Ditches, provided that the Lessor do carry away the Earth;* also, *That the Lessee shall pay twenty Shillings a Year Rent;* or, *That the Lessee shall not alien,* and the like; these are said to amount to good Covenants on both Sides, &c. Dyer 57, 150. 2 Co. Lord Cromwel's Case.

But regularly in all Cases, where Words that do begin the Sentence ^{Condition-} be Conditional, or have the Effect ^{nal Words.} of a Condition, and do give another Remedy, there they shall not be construed to make a Covenant: Yet if Words of Condition and Words of Covenant be coupled together in the same Sentence, (as, *Provided always,* and

and it is covenanted, and the like) in such Cases the Words may be construed to make a Covenant and Condition both. *Bro. Cov.* 21, 26, 38.

Cause, &c. And note, That where a Covenant is penn'd conditionally, and so *to be first performed.* as one Thing is the Cause of another, (as if one covenant to pay me 10 *l.* if I serve him a Year; or to new build a House so as he may have the old Materials) in all these Cases, if the Cause or Condition be not observed, the Covenant shall not be performed. *Co. Lit.* 204. *Dyer* 371.

Lawful Matter.

Where the Substance and Matter of a Covenant to do any Thing is lawful, such Covenant is good; and generally where a Condition for the Matter of it is good, a Covenant comprehending the same Matter is good also.

Matter unlawful.

But if the Matter required to be or not to be done by the Covenant be unlawful in the Substance thereof, then is the Covenant void, and doth not bind: So if the Covenant be impossible. *Dyer* 6, 13, 324, 251, 253.

Covenants, how taken.

A Covenant is to be always most strongly taken against the Covenantor, and most in Advantage of the Covenantee.

To

Ch. 10. Landlords and Tenants. 305

To be taken according to the In-*Intend.*
tent of the Parties, &c.

When no Time is limited for the *Time.*
doing of the Thing, it shall be done
in reasonable Time, and the like.
Plowd. 287.

Any one that is Party to the Deed *By whom.*
to whom the Covenant is made, may
take Advantage of the Covenant, but
not a Stranger.

As if *A.* Covenant with *B.* to do *Stranger.*
an Act to *C.* who is no Party to the
Deed, and he doth it not; *B.* and
not *C.* must sue him upon this
Breach.

And regularly all those that do *Who bound.*
seal and deliver the Deed, and are
named and bound by the express
Words of the Covenant, (whether it
be collateral or inherent) are bound
by the Covenant contained in the
Deed.

And therefore if Heirs, Execu-*Heirs, &c.*
tors, Administrators or Assigns, be
named in the Covenant, for the most
part they are bound by the Cove-
nant.

And in all Cases of inherent Co-*Inherent*
venants, *i. e.* that tend to the Sup-*Covenants.*
port of the Thing granted, (in Re-
spect of which it is presumed the
Lessor took the Lessee for the Land)
where

where a Man doth covenant for himself only, and doth not name his Executors and Administrators, or either of them; yet they are bound, and may be charged by the Covenant notwithstanding; and in some Cases the Law is so also for collateral Covenants:

*Run with
the Land.*

Assigns.

*Covenant
gone.*

Branch.

*Become im-
possible.*

And in most inherent Covenants, such as have the Land, albeit they be neither Executors nor Administrators, or either of them, but Assigns, &c. shall be charged by the Covenant, tho' they be not named, for these Covenants are said to run with the Land. 5 Co. 16, 17, 18.

Where the Deed it self wherein the Covenants are contained, or the Estates on which the Covenants do depend, is gone and determined, there regularly the Covenants are gone also.

But the Surrender of a Lease doth not discharge the Breach of Covenant, which was before the Surrender. Dyer 10. 10 Co. 23.

Where a Covenant is become impossible to be done by the Act of God, by this the Covenant is discharged; as where J. covenants to serve B. seven Years, and dies before

h. 10. Ch. 10. Landlords and Tenants. 307

fore the seven Years be expired.

1 Co. 98. *Plowd.* 286.

Where there is an exprefs Cove-^{Exprefs.}
nant in a Deed for quiet Enjoy-
ment, the implied Covenant is gone.

2 Co. 80.

By a Release of all Covenants^{Release of}
from the Covenantee, the Covenant^{Covenants.}
is discharged, so as the Release be
by Deed; for a Covenant by Deed
cannot be discharged by Word.
Therefore if *A.* covenanteth with *B.*
to build a House by a Day, and in
the mean time *B.* doth bid or desire
him to let it alone; this doth not
discharge the Breach of the Co-
venant; but the Lessor may sue
for it notwithstanding. *Pasch.* 6 *Car.*
B. R.

Note, If there is only a Hand to a *Writing*
Writing, and not a Seal, Covenant *not sealed*
lies not, but Case upon Agreement;
and declare, That in Consideration
the Plaintiff had promised to per-
form the Agreement on his Part,
the Defendant promised to perform
on his Part, &c. and then assign
Breach, &c.

Where, in a Covenant, the latter^{Exposition}
Words being general, shall be re-^{of Words.}
strained and expounded by the for-
&c.
mer

mer which were special, *vide Saund. Rep. 1 par. fol. 59, 60.*

Where in a Covenant the former general Words shall be restrained and expounded by the later special Words, *Idem 59.*

In Covenant, the former general Words, That the Original Lease is indefeasible, shall not be restrained by the later Words, That the Assignee *haberet, reueret & gauderet*, &c. without any Let, &c. of the Assignor. *Idem 60.*

A particular Covenant in a Deed, may restrain a general Covenant in Law. *Ibid.*

*That he
was seised
in Fee.*

Covenant that he was seised in Fee, (notwithstanding any Act done) and that the Lands were of the yearly Value of 260 *l.* there the Words *Notwithstanding, &c.* may not be applied to the Covenant concerning the Value. *Ibid.*

Assignee.

What Action of Covenant lies for an Assignee of a Reversion at Common Law, *Idem 238, 239*

Action of Covenant by an Assignee of a Reversion against the Lessen for Rent, need not to be laid in the County where the Land lies. *Idem 239, 240, 241.*

Ch. 8. Ch. 10. Landlords and Tenants. 309

An Action lies for a Lessor or his *Lessor and* Assignee against the Lessee, upon *Lessee.* his Covenant for Payment of Rent, notwithstanding that the Lessor or his Assignee had accepted Rent before of the Assignee of the first Lessee; for Covenant is not like an Action of Debt for Rent. *Idem* 240, 241.

If by a Deed sealed by both Parties, it is agreed, That the Defendant *Agreement for Lands.* shall give the Plaintiff such a Sum for all his Lands in *A.* It will amount to a Covenant on the Part of the Plaintiff to convey the Land. *Idem* 230.

Where Covenant lies upon the *Demise.* Word *Demise*, and where not, *Idem* 321, 322.

Where Covenant lies for *Misfeasance.* *Misfeasance*, but not for *Nonfeasance*, *Idem* 322, 323.

If a Man by Deed grant a Water-*Water.* course, and stop it, the Grantee may *course.* have an Action of Covenant. *Idem* 322.

If one of the Parties covenant to *To assure* assure Lands, and the other, in *Lands.* Consideration of the same Covenant performed, covenant to pay a Sum of Money, he is not obliged to pay the Money until the Lands be assured,

red,——— But it is otherwise, if the Covenant had been in Consideration of the Covenant to be performed. *Saund. Rep. 2 par. 156.*

Mutual Co-venants. Where, in mutual Covenants the Words, *In Consideration of the Performance thereof*, shall make a Condition precedent, and where not, *Id. 156, 157.*

Negative and Affirmative. If the Covenant of the one Part be negative, and the affirmative Covenant on the other Part be in Consideration of the Performance thereof; although the negative Covenant is broken, yet the affirmative Covenant ought to be performed. *Idem 157.*

A negative Covenant is not said to be performed, until it become impossible to break it. *Ibid.*

Upon Warranty of Lands. In Covenant upon a Warranty of Lands for Years, the Plaintiff ought to shew what Estate or Right he that entred into the Lands had at the Time of his Entry; and it is not sufficient to aver, that he had a good Title. *Idem 178, 179, 180, 181.*

What Warranty shall be taken only for a Covenant, *Idem 180.*

An Action of Covenant lies against a Woman upon a Warranty by her and her Husband, annexed to her Estate for Years in a Fine.
Idem Ib.

Where, by the Grant of a Rever-Covenant
sion, the Rent reserved upon a Lease^{transferr'd.}
for Years is well transferred to the
Grantee, the Law transfers also to
him the Covenant of the Lease for
the Payment of it, as incident to
the Rent. *Idem 371.*

If in an Action of Covenant any Breaches
Breaches are well assign'd, and assign'd.
others ill, and the Defendant demurs
to the whole Declaration; the Plain-
tiff shall have Judgment for those
Breaches that are well assigned, and
for the Residue he shall be barr'd.
Id. 380.

*Some resolved Cases as to Pleadings in
Covenant upon Leases.*

In Covenant against an Assignee Breach for
for not repairing a House, Defen-^{not repair-}
dant pleaded in Bar an Accord be-
ing.
tween him and the Plaintiff, and
Execution of it in Satisfaction of
the Reparations. It was objected,
That neither Arbitrament, nor Ac-^{Bar by ac-}
cord with Satisfaction, is a Plea, when^{cord.}
an

an Action is founded upon a Deed, because Matter *en Fait* cannot be avoided by Matter *in Pais*; so when an Action is in the Realty, or mixt with the Realty, Accord with Satisfaction is no Plea, and is not a Bar for the Personalty, but it was *And good.* adjudged that the Plea was good: And a Difference was taken, where a Duty accrues by a Deed in Certainty, as by Covenant, Bill or Obligation to pay a Sum of Money; there, because it takes its Essence by Writing, it ought to be avoided by Matter of as high a Nature: But when no certain Duty accrueth by the Deed, but a Default subsequent gives only Damages, there Accord with Satisfaction is a good Plea, 6 Co. *Blake's Case*.

Vide 2 Keb. p. 51. The Court held, That an Accord was a good Plea to a Covenant to pay a Sum certain, or an Obligation when joined with other Things uncertain. But Concord after the Deed, cannot be a Bar to such Covenants as were not broken. 2 Roll. 187, 188.

Defendant Moved for a Repleader in an *pleads Pay-* Action of Covenant, to perform *ment after* Articles and Payment of Money, *the Day,* whereto the Defendant had pleaded *and good.* Pay-

Ch. 10. Landlords and Tenants. 313

Payment of the Money after the Day, which the Plaintiff accepted; and because it was not pleaded by way of Accord and Satisfaction of the Covenant wherein Damages also are recovered, said to be ill. And this Issue being insufficient, and found for the Defendant, it's not aided by the Statute of *Jeofails*. And by *Twysden*, Payment pleaded to a single Bill, if found for the Plaintiff, he shall have Judgment; if for the Defendant, there shall be a Repleader; *sed adjournatur.* 1 *Keb.* 210. *Vide* 3 *Cro.* 455. *pl.* 2. *Goldsb.* 100. *pl.* 11.

In Covenant brought against a *Bar, That* Lessee for Years, for not keeping ^{*the House*} the House in Repair. The Defendant pleaded in Bar, That the House ^{*was burnt*} ^{*by Casualty.*} was burnt by Casualty; it was holden to be no good Plea in Bar, for that a Lessee that covenanteth to repair, ought to do it, be his House burnt by Negligence, or by any other Means. *Style* 162. *Compton* and *Allen's Case*. See at the latter End of this Treatise.

Defendant pleads, the House was ^{*House re-*} burnt, but repaired in convenient ^{*paired in*} Time before Action brought: The ^{*convenient*} Plaintiff demurred, because not ^{*Time.*}

P

shewn

shewn by whom, not by the Defendant himself: But the Court said, That being repaired, though by a Stranger, was a good Plea; but in Truth the Plaintiff had repaired it, and because it was a hard Case, the Court suffered him to wave his Demurrer, and take Issue not repaired in convenient Time, the House being uncovered. 2 *Keb.* 535.

Vide 3 *Keb.* 40. The like Plea and Demurrer, because the Time not put in certain; *sed non allocatur*, the first of *July* sufficient.

2dly, Because not said who repaired; and *per Cur'*, The House being rebuilt by the Plaintiff himself, and the Defendant's Executors and Administrators bound to repair it; the Plea is ill, and must shew who repaired it; for if the Plaintiff built it, this is no Excuse; and Judgment for the Plaintiff.

*Bar by
Tempest:*

If a Lessee for Years covenanteth to leave Wood in as good Plight as it was at the Time of the Lease, and afterwards the Trees are overturned by a Tempest, he may plead this *And good.* Matter in Bar, and it shall discharge him of his Covenant, *quia impotentia*

tia excusat Legem. 1 Co. Shelly's Case.
40 Ed. 3. 6.

Upon a Covenant in an Indenture for
Breach for
ture of Lease, the Breach was for ^{Non pay-}
Non-payment of Rent. Defendant ^{ment of}
pleaded in Bar, That the Plaintiff ^{Rent.}
entred into Part of the Land de- ^{Bar by En-}
Bar by En-
mised before the Rent was due, for ^{try.}
try.
which the Action was brought, and
so had suspended his Rent. Plain-
tiff replied, The Defendant did re-
enter, and so was possessed as in his
former Estate. And it was held ill ^{Repl. De-}
Repl. De-
by the Court, because the Plaintiff ^{pendant en-}
pendant en-
did not shew that the Defendant con- ^{tered and ill.}
tered and ill.
tinued the Possession till the Rent ^{Bar good.}
Bar good.
grew due, but only that he was pos-
sessed in his former Right ; but the
Plea in Bar was a good Plea, and ^{Bar by As-}
Bar by As-
Judgment against the Plaintiff, ^{quod signment}
quod signment
nil capiat per Billam. Style 243. Page ^{before Rent}
before Rent
and Parr's Case. ^{arrear.}
arrear.

Vide 3 Keb. 858. In Covenant,
Breach for not repairing. Defendant
pleads Entry into Part, and build-
ing, &c. Plaintiff demurred.

In Covenant against Defendants,
Executors to C. Lessee for Rent in
Arrear in the Defendants Time.
Defendants plead Assignment be-
fore Rent arrear. Plaintiff demur-
red — *Per Cur'*, Tho' Debt may

be in the *debet & detinet* on the Executors Possession, and then such Assignment is a good Plea. *Contra* on expresse Covenant, where the Executor is charged as such ; but if charged as Assignee only, then the Plea were good of Assignment before Rent arrear ; and here Judgment must be *de bonis Testatoris*, therefore Judgment for the Plaintiff, *nisi*. 3 *Keb.* 363.

Non locavit no Plea In an Action of Covenant on Demise of a Freestone-Quarry to **on a Lease** the Defendant, the Defendant covenants not to dig in any other Part of **of a Quarry by Indenture.** the Common, and Breach being assigned in digging, Defendant pleads *non locavit* the Quarry *prædict* ; to which the Plaintiff demurs, the Demise being by Indenture, and the Covenant collateral, the Plea was held frivolous, and Judgment for the Plaintiff, *nisi*. 1 *Keb.* 715.

Departure. In an Action of Covenant for not repairing a House, the Defendant pleads Performance, and after rejoins, that he was ousted by a Stranger, which *per Curiam*, on Demurrer of the Plaintiff, is a Departure. Judgment for the Plaintiff, *nisi*. *Idem* 662.

Upon

Ch. 10. Landlords and Tenants. 317

Upon Covenant to pay Money, *Utlary*
Utlary a good Bar. *Idem* 324. *pleaded.*

Non infregit Conventionem is tried
where the House is not repaired.
Idem 575.

In an Action of Covenant for *General*
Rent Arrear on a Lease for Years, *Release of*
the Defendant pleaded a general *all De-*
Release of all Demands, (which *mands.*
was made by Award on collateral
Differences between them) made
after the Covenant and before the
Rent due: to which the Plaintiff
demurred, for that the Cause of the
Release was particular and collateral.
And Judgment for the Plaintiff, *nisi.*
Idem, p. 499, 510, 511. 2 Cro. 107,
486. Mo. 544. Et vide *Bridgm.* 124.
C 20 Aff. 5.

See 3 *Keb.* 814. Release of all *Simile.*
Demands, Demurrer because the Re-
lease is particular, and bars not for
a Covenant broken; so after Cause
of Action by Battery, Release of
all Demands in personal Estate no
Bar. 3 *Keb.* 418. A Covenant bro-
ken is not discharged by Release to
Executor of all Demands of perso-
nal Estate of the Testator.

In Covenant for Rent on *Nil de- Nil debet*
bet pleaded, the Plaintiff demurr'd *and De-*
specially; because albeit the Cove-
nant

nant doth not alter the Rent, yet *Nil debet* cannot be pleaded. But the Court said it was well enough. 2 *Keb.* 347.

Covenant to enjoy against lawful Impediment, is broken by Entry of one *Habens Jus.* 3 *Keb.* 40. So by one *Clamans Jus*, and not said *Legale.* *Idem* 163. Entry *Clamans Titulem*, not said by Stranger, and since the Covenant, no Breach. 2 *Keb.* 146.

*Covenant
for quiet
Enjoyment,
broke by
Leasewith-
out Entry.*

In Covenant on Indenture, 8 *Oct.* 1652. of Demise to hold for 99 Years after the Death of Z. K. if three Lives so long live; Defendant pleads, That the Plaintiff *potuit uti*, and enjoy the Premises without the Let of the Lessor. To which the Plaintiff replies, That the Lands are and were Dutchy Lands, and that the King for Fine and Rent had devised the Reversion to H. for 99 Years, if the three Lives live, by Reason whereof he could not enjoy. Defendant demurs, and Judgment for the Plaintiff: All this being confessed by the Demurrer, the Plaintiff needs not shew that he entred, but the Defendant should plead it. 3 *Keb.* 162, 202.

Ch. 10. Landlords and Tenants. 319

Covenant on two Deeds of former Husband of the Defendant's Wife, to cut Twelve of the best Trees, whereby the Plaintiff hath Election: And Breach is assigned, That before the Time the Defendant cuts down some of the Trees. Defendant saith, There were sufficient standing; to which the Plaintiff demurred. *Vide 3 Keb. 477.*

Covenant no Duty, nor Cause of Release. Action, till broken; and therefore not discharg'd by Release of Actions. *Aleyn's Rep. 39. Vide antea.*

Covenant to perform certain Indentures, and to save the Plaintiff harmless; he cannot plead generally Performance of Covenants, because some may be in the Negative; and also he ought to shew how he saved him harmless. *Aleyn 72.*

If the Lease is not good, there's Lease no Covenant nor Breach. *Yelv. 18, naught. 19.*

Note, That all Covenants between the Lessor and Lessee are Lessor and Lessee. Covenants in Law, or express Covenants. *Vaugh. Rep. p. 118.*

An express Covenant restrains the Restraint, general Covenant in Law. *Idem 126.*

Quiet Enjoyment. Where the Covenant is to enjoy against one or more particular Men, and where against all Men. *Idem* 127.

Simile. By a Covenant in Law, the Lessee is to enjoy his Term against the lawful Entry or Interruption of any Man; but not against tortious Entries, because the Lessee hath his proper Remedy against the Wrong-Doers. *Idem* 118, 119.

Lessee ousted by a Stranger. If a Stranger who hath no Right outs the Lessee, he shall not bring Covenant against the Lessor, because he hath Remedy by Action against the Stranger: But if he enter by elder Title, then he shall have Covenant, because he hath no other Remedy. *Idem* 119, 120.

Ousted legally. Though the Covenant is, That the Lessee shall enjoy against all Persons; yet he shall not have Covenant against the Lessor, unless he be legally ousted. *Idem* 119, 120, 121, 123.

Strangers. The Law will never adjudge, that a Man covenants against the wrongful Acts of Strangers, except the Words are full and express. *Idem* 121.

When

Ch. 10. Landlords and Tenants. 321

When the Covenant is to enjoy *Tortious* against all Men, the Covenant is *Acts*. not expressly to enjoy against tortious Acts, neither shall the Law so interpret it. *Idem* 123, 125.

What collateral Matters shall be *Collateral* implied upon a Covenant. *Vide* *Matters*. 1 *Ven. Rep. p.* 26, 44, 55. And see the Table of this Treatise.

Though a Covenant be made only *Damages*. to a Man, his Heirs and Assigns; yet if the Breach be in his Life-time, his Executors may bring the Action for Damages. *Idem* 176.

That a Covenant for quiet Enjoy-*Quiet En-*ment may bind, notwithstanding a *joynment*. subsequent Act of Parliament to alter the Title. *Idem* 175, 176.

In an Action of Covenant, the *Plea*. Defendant cannot plead, That the Plaintiff *tempore quo, nihil habuit in Tenementis*; though such a Plea in an Action of Debt for Rent is good. 2 *Vent. Rep.* 99.

Covenant to repair a House; if *To repair*. the Lessee come without Licence after the Term ended to repair the House, he is a Trespassor. 2 *Roll.* 250.

Note, The Difference between *Covenants*. Covenants in Gross, and Covenants *in Gross*. grounded upon a Lease, Covenants

P 5 having

having a Lease for their Foundation, are within the *Proviso* of the Statute of 13 *Eliz. cap. 5.* but not in *Gross. 2 Roll. 401.*

Breach for not repairing. In an Action of Covenant to repair, and so to leave the Premises, the Breach was in 60 Rood, &c.

Ran.

Defendant Pleads, That one Barn was pulled down by the Plaintiff's Consent; and as to the rest, That they were repaired, and so left: To which the Plaintiff demurred generally. *Per Chief Justice*, He should either have taken Issue, That he repaired the Particulars; or say, They were not in Decay, *modo & forma*: And the Parties agreed to take Issue on one of the Points. 2 *Keb. 798.*

Concerning

Concerning the late Act of Parliament, to prevent Destruction of Houses by Fire, and new building of Houses within the Bills of Mortality.

BY Stat. 6 *Annæ*, cap. 31. for preventing of Mischiefs that may happen by Fire, it is enacted, That all Houses built on old or new Foundations within the Bills of Mortality, shall have Party-Walls between, of two Bricks thick in the Cellar and Ground-Stories, and thirteen Inches thick upwards from the Foundation, and eighteen Inches above the Roof, and no Cornish of Wood shall be made in such new Houses; but Front and Rear Walls of such new Houses shall be built of Stone or Brick, to be carried two Foot and an half above the Garret Floor, and coped with Stone or Brick: And if any Houses shall be built in the said Places, contrary to the Intent of this Act, then the Owner and Head Builder undertaking such Building, shall forfeit 50 *l.* one Moiety to the Informer, the other

to the Poor of the Parish, to be levied by Warrant and Distress, &c.

*Proviso
between
Landlord
and Te-
nant.*

That no Action shall be maintained against any in whose House or Chamber any Fire shall accidentally begin; provided that nothing therein shall make void any Agreement between Landlord and Tenant. Also by the said Act, That if any Servant, through Negligence, shall cause any House or Out-house to be fired, such Servant being thereof convicted by Oath before two or more Justices of Peace, shall forfeit 100 l. unto the Church-wardens of the Parish, to be distributed amongst the Sufferers, as to the Church-wardens shall seem just: Upon Non-payment, such Servant shall be committed to some Work-house, by Warrant of one such Justice, for eighteen Months, to be kept to hard Labour.

There is also a Proviso, That so much of this Act, as relates to the Indemnity of those in whose House any Fire shall begin, shall continue for three Years, and from thence to the End of the next Session of Parliament.

But

But by an Act made 7 *Anna*, for making the former Act more effectual, it is enacted, That the former Clause concerning Houses to be erected and built either upon old or new Foundations, was not intended, or shall be construed to extend, to Houses to be built upon any Part of *London-Bridge*, but that the same may be erected and built with Wood and Timber, as hath been hitherto used.

And that all Houses to be built upon old or new Foundations, in any Place about *London* and *Westminster*, or Places comprised within the Weekly Bills of Mortality, (except Houses on *London-Bridge*, and the River of *Thames* below *Bridge*) shall have Party-Walls between House and House wholly of Brick or Stone, except Door-Cases, Windows, Lentils, Breast-Summers, Storey-Posts and Plates, of two Bricks thick at least in the Cellar, and one Brick and an half thick upwards to the Top of the Garret-Floor, and all Gable-ends to be one Brick in length, and eighteen Inches above the Roof; and to have no Beams or Rafter lie or stand, or be in the Brick-Works of the Gable-ends.

That

That all Party-Walls hereafter to be built, shall be built nine Inches on each Man's Ground, whether the old Party-Wall be Brick, Stone or Timber; and that the first Builders shall have Power to pull down the same, and build up the new Party-Wall as aforesaid, and be paid by the Owner of the next House after the Rate of 5 *l.* *per* Rod, as soon as he shall have built the said Party-Walls: And for all Houses hereafter to be built, that will not yield the Rent of twenty Pounds *per Annum* more than the Ground Rent, to be left to the Discretion of the Builders, provided that all Party-Walls for the same be built with Brick.

That all Chimney-Jambs and Backs shall be nine Inches thick from the Cellars to the Roof; and all Withs the Inside of such Chimnies, four Inches and an half in Breadth; all the Funnels plaistered or pargeted the Inside from the Bottom to the Top; all Chimnies to be turned or arched under the Hearth with Brick, (except upon a Ground-Floor;) and that no Timber shall lie nearer than five Inches to any Chimney, Funnel or Fire-place; and all Mantles between the
Jambs

Jambs arched over with Brick ; and no Wood or Wainscot shall be plac'd or affix'd to the Front of any Jamb or Mantle of any Chimney, nearer than five Inches from the Inside of such Jamb or Mantle ; and that all Gable-ends, called nine Inches thick in Party-Walls, be rendred on the ruffest Side : and that all Stoves and Boilers, Coppers and Ovens, that shall be set up with Brick or Stone, shall not be nearer than nine Inches at the least to the adjoining House, and no Timber to lie nearer than five Inches to any Fire-place or Flew.

That no Brick or Stone-Work in the Fronts, Party or Partition-Walls of any House, Tenement or other Building whatsoever, that shall be erected upon any new or old Foundation within the Cities of *London* and *Westminster*, or their Liberties, shall be supported, depend or bear upon any Sort of Timber or Wood-Work, (excepting upon Piles and Planks, where they are absolutely necessary for Foundations in marshy and unsound Ground, and excepting likewise all Houses upon *London-Bridge*) upon Pain that every Person so offending, shall for every such Offence

fence suffer Imprisonment for three Months without Bail or Mainprise.

That no Door-Frame or Window-Frame of Wood, to be used in any House or Building, which shall be erected upon old or new Foundations, within the aforesaid Cities of *London* and *Westminster*, or their Liberties, (except Houses on *London-Bridge*, and on the River of *Thames* below Bridge) shall be set nearer to the outside Face of the Wall than four Inches.

T H E

THE TABLE.

Actions. (*Vide* Assigns, Covenants, Conditions, &c.

A CTIONS for Arrears after Entry,	Page 102
Action for hindering to take away Em- blements,	151, 152
Action in Waste, how it lies,	220
By whom it must be brought,	221, 222
Who must join in the Action,	223
Where it lies after a Release,	226

Actions on the Case.

<i>Actions on the Case between Farmers, Tenants, and others, relating to Torts and Nuisances, &c.</i>	292
For stopping up a Way to a House or Land,	<i>Ibid.</i>
For turning off Water,	<i>Ibid.</i>
For drowning another's Ground,	292
For diverting Water from a Mill,	<i>Ibid.</i>
For disturbing his Walk or Foldage,	293
For not folding his Sheep,	<i>Ibid.</i>
For disturbing him in his Common,	<i>Ibid.</i>
For digging a Pit there,	<i>Ibid.</i>
For	

The T A B L E.

For inclosing the Common, (See Tit. Common.)	Page 292
For disturbing a common Watering-place,	294
For ousting the Lessor's Executor,	Ibid.
For hindering the Lessor to view,	Ibid.
For Lessee for Life against Lessee for Years for Waste.	Ibid.
So for Lessee for Years against Lessee for Years,	Ibid.
Where the Lessor neglects to pay Subsidies,	295
Against Tenant at Will for voluntary Waste,	Ibid.
Against Tenant by <i>Elegit</i> , who holds over,	Ibid.
Against Lord for cutting down his Copyholders Trees,	Ibid. & 296
For refusing to grind at the Lord's Mill,	296
For Damage by Fire,	Ibid.
For not repairing Fences.	Ibid.
For not scouring Ditches,	297
For not repairing Sea-Banks or River-Banks,	Ibid.
For not repairing a High-way, or Private Way,	Ibid.
For not repairing his House,	298
For Disturbance by an Upper-Room,	Ibid.
For Damage by an Under Room,	Ibid.
For over-building another's House,	Ibid.
For stopping Lights and Windows,	299
<i>Simile</i> by Walls, Wood-piles, &c.	Ibid.
How such Wrong may happen to be purged,	300
For Nuisances by Dye-houses, &c.	Ibid.
By setting up a Pig-sty,	Ibid.
By a Chandler's Shop, &c.	301
By throwing dead Carcases, &c. into another's Ground,	Ibid.

By

The TABLE.

By suffering Tithes, Hay, &c. to lie too long on
the Place where bought, &c. Page 301
Proviso for saving Actions between Landlord and
Tenant in the late Act, to prevent Destruction
of Houses by Fire, &c. 307, 308, &c.

Acceptance.

Acceptance of. Rent where no Confirmation of
the Lease, & *contra*, 71, 83, 84, 96
After Acceptance of Rent from the Assignee, Co-
venant lies against his Lessee, 114

Amends. (*Vide* Distress)

Assignees. (*Vide* Covenants, Rent, &c.)

How they are bound by, and liable to, the Co-
venants of the Lessee or Assignor, &c. 84, 85, 86
Upon an Assignee's being evicted, 86
Actions by Assignee of Assignee, Executors of
Assignee, &c. 87
How he must discharge himself of the Rent, *Ibid.*
Notes in Nature of Inland Bills, how assignable
over, 286
Assignee, where bound by the Covenants of the
Lessee, and where not, 119
Assignee having assigned over, not answerable for
the Rent, 148
Assignee, tho' refused at one Time, may be ac-
cepted another Time, 115
Assignment of Hedge-boot, &c. 97
Assignment by Tenant for Years, who dies, 114
Simile by his Executors, &c. *Ibid.* (*Vide* Page 87.)
Reversion not assignable without Deed. Page 115

The TABLE.

Attornment.

Attornment, how dispensed with by the late Act
of Parliament, 115

Abolish'd. (*Vide Distresses and Replevin.*)

Bargains, &c.

B Argaining, buying and selling Goods and Chas-
tels, according to the Act of 29 Car. 2. cap. 3.
280, &c.

Concerning Notes promising Payment, 286
How they are assignable over, &c. *Ibid.*

Bonds.

Bonds to perform Covenants, concerning them,
98, &c.

For Rent, 98

Simile for Repairs, 99

Not forfeited where the Rent is in Suspence, 100

Chancery.

R Elief therein for Mortgagees, 63
Waste relieved in *Chancery*, 88

Not against a voluntary Act, *Ibid.*

For Relief in *Chancery* against Deeds and Leases,
89

Com

The T A B L E.

Commencement and Determination of Leases, &c.

How the Commencement and Determination of Leases ought to be, Page 83, 136, 139, 140 Upon a Lease from Year to Year, 83 Voidable Leases, how determined or continued, <i>Ibid.</i> Continuance of the Term, tho' <i>rei veritate</i> deter- mined, 84 <i>Simile</i> of the Grant of next Avoidance of an Ad- vowson, <i>Ibid.</i> Lease determined by Husband's Death, though limited over to the Wife, 134 How to commence, if <i>Habendum</i> be à <i>Die Datus</i>, or à <i>Confectione Indenture</i>, 135 Further concerning the Commencement of Leases, 136 Where not mentioned when it shall begin, Page 137 How, if the Date be impossible, <i>Ibid.</i> If it be without Date, <i>Ibid.</i> If from the End of the Lease misrecited, <i>Ibid.</i> Upon a Lease for Life made by Prebendary, <i>Ibid.</i> Made to commence upon Failure of Issue, 138 Where one Lease is made to Day, and another the next Day, of the same Lands, <i>Ibid.</i> Second Lease to commence upon Surrender of the first, <i>Ibid.</i> Where made to commence after another, and there is none, 139 To commence upon an Incertainty, how, <i>Ibid.</i> Upon Nomination of another, 140 Upon Payment of a Sum of Money, <i>Ibid.</i> By a Parson of his Glebe, terminates with his Life, <i>Ibid.</i> For	83 83 <i>Ibid.</i> 84 <i>Ibid.</i> 134 135 136 137 <i>Ibid.</i> <i>Ibid.</i> <i>Ibid.</i> <i>Ibid.</i> 138 <i>Ibid.</i> <i>Ibid.</i> 139 <i>Ibid.</i> 140 <i>Ibid.</i> <i>Ibid.</i> For
--	--

The T A B L E.

For 100 Years, if *A.* and *B.* live so long, *Page* 140
By a Joint-Tenant to begin after his Death, 142

Common. (*Vide* Tenants.)

<i>For the Doctrine of Common between Landlord and Tenant, see Chap. VII. throughout, viz.</i>	
Of the several Sorts of Common, <i>Page</i> 234, 235, &c.	
Of the Lord's Common, and who shall have it,	239, &c.
Of Common Appendant, and for what Cat- tle, &c.	235, 241
Of Common Appurtenant, and how it may be used, &c.	235, 255
Of Common for Cause of <i>Vicinage</i> , and how it may be used,	236, &c.
Of Common in Gross, how it may begin and be used, &c.	234, 255
Of Common without Number,	239, 246, 247
Concerning the Seisin of Common, how to be obtained,	262
Concerning what Things a Commoner may do, &c.	264
Concerning the Approvement of Common,	273, &c.
Of the Admeasurement of Common,	277
Common, an Agreement to enclose it decreed to be perform'd in <i>Chancery</i> ,	278
Common, when it may be taken in a common Field,	279

Conditions.

Condition not to alien,	102
Entry for Condition broken,	<i>Ibid.</i>
	Con-

The TABLE.

Condition not to alien,	Page 102
Upon Condition, that if the Lessor alien, the Lessee shall have Fee,	104
Where, upon Condition broken, Executors may enter,	105
Simile where, upon Reservation of Rent, the Heir may enter,	133
Condition for Lease to be void, if one of Joint- Tenants died,	105
Where the Devise of a Lease may be a Breach of Condition,	106
Who may take Advantage of a Condition,	<i>Ibid.</i>

Coppolders.

(Vide *Fines, Forfeitures, and Tenants by Copy of
Court-Roll.*)

Whether Copyhold Land be within the Statute of Limitation of Entries,	42
--	----

Corn and Crop.

Concerning a Tenant's Sowing and Reaping,	21, 151
Where the Landlord shall have it,	152
Concerning Roots, Hemp, or Flax, &c.	<i>Ibid.</i>
Where the Executors shall have it,	<i>Ibid.</i>
How, upon a Tenant's Estate uncertain,	21, 154
The Reason why Tenant of uncertain Estate shall have it,	<i>Ibid.</i>
Where the Lessee or Surrendree shall have it,	153
Where Lessor of Tenant for Life shall have it,	<i>Ibid.</i>
Where for his Benefit of whose Manurance the Corn came,	154 For

The TABLE.

For Reversioner of Tenant for Life,	Page 154
Where the Remainder-Man upon a Demise, and not the Executors,	155
Where the Executors of the Husband that sowed, and where the Wife,	<i>Ibid.</i>
Where the Husband of Tenant in Dower shall have it,	<i>Ibid.</i>
Where Lessee for Years of the Wife's Lands, so of Tenant by the Courtesy, shall have it,	<i>Ibid.</i>
For whose Benefit upon Ground sown by a Woman <i>durante Viduitate</i> , who takes a Husband,	156
How after Husband's Death upon Lease of his Wife's Lands,	157
Upon a Recovery by Title Paramount, who shall have it,	<i>Ibid.</i>
Where the Heir shall have it,	<i>Ibid.</i>
Where the Disseisor shall,	158
Where the Widow in Dower shall,	<i>Ibid.</i>
Where her Executors shall have it,	<i>Ibid.</i>
Where Tenant in Tail gives it away, and dies before Severance,	<i>Ibid.</i>
Where such Tenant gives away a Tree growing upon the Land,	152
Where Tenant in Fee-Simple does the like.	<i>Ibid.</i>

Covenants.

(Vide *Assignees, Rent, &c.*)

Upon Lessee's Covenant to build, how his Assignee shall be liable,	84, 85
When the Covenant extends to a Thing in being, and is annexed to the Thing demised,	<i>&c.</i> 85
Upon a Covenant to repair, Assignee bound,	86
Where	

The T A B L E.

Where Covenantor bound, but not the Assignee Page 86.

Upon a Covenant to deliver a Stock of Cattle, &c. Ibid.

Writ of Covenant upon Assignees being evicted, Ibid.

32 H. 8. 24. Extends not to collateral Covenants, 87

Actions of Covenants by Assignee of an Assignee, &c. Ibid.

Covenant for Lessee to have House-Boot and Fire-Boot upon the Lease of a House and Wood, 89

How a Covenant to permit, &c. shall relate to the Assigns, 93

Upon a Covenant to build, and he builds more, &c. Ibid.

Upon a Covenant not to inclose, 94

Latter Covenant by second Indenture, no Bar, Ibid.

Action of Covenant upon stopping Water-course, Ibid.

Simile upon destroying Estovers, Ibid.

Covenant of Testator broken, Ibid.

Not against Grantor for not repairing, 94

How by an Assignee of Reversion, though not named, Ibid.

How by Grantee of a Reversion, Ibid.

What Words amount to a Covenant in a Deed, 95

A Proviso may, Ibid.

That his Under-Tenant should not dig, Ibid.

Where Covenant goes with the Land, Ibid.

Covenant, if Rent be behind, Lease to be void, 96

The T A B L E.

Upon a Covenant to support, uphold, &c. when Action to be brought,	Page 96
How against Assignee, though not named, for not repairing,	97
Lessee takes an old ruinous House, and cove- nants to leave it in Repair,	<i>Ibid.</i>
Upon a Covenant to leave a Wood in as good Condition, &c.	98
Lease with Warranty amounts but to a Cove- nant,	100
Where Covenant lies against Lessee, after Ac- ceptance of Rent from his Assignee,	114
Modern Cases adjudged in Covenant,	302
Concerning quiet Enjoyment,	<i>Ibid.</i>
Of Covenants Affirmative and Negative,	<i>Ibid.</i>
By Deed-Poll sufficient,	303
Concerning Words of Covenant,	<i>Ibid.</i>
Conditional Words concerning them,	<i>Ibid.</i>
Where the Cause of the Covenant must be per- formed,	304
Covenant must be of lawful Matter,	<i>Ibid.</i>
Covenant, how taken against Covenantor,	<i>Ibid.</i>
Several other Observations relating to Cove- nants,	305
Some resolved Cases as to Pleadings in Cove- nant upon Leases,	311, 312

Customs.

Custom, what,	26
<i>Properties incident for a good Custom,</i>	27
In Customs, there is User, Non-User, Abuser, and Inter-User,	28
Customs must be reasonable,	30
How at the Will of the Lord,	33
	Con-

The T A B L E.

Concerning Tenants Services, &c. Page 30
 Concerning Sole-Feeding, 32

Distress.

(Vide *Replevin*, *Rescous*, &c.)

Distress for Rents, where Tenant for Years grants Part of his Term, 110. (*Vide* 187, &c. 193, &c.)

Distress by Custom, concerning it, 154

Of putting Distress in Pound Overt, 163, 164

Of what Things Distress may be, *Ibid.*

General Rule of Things levant and couchant, *Ibid.*

What Things may not be distrained for Rent, 164, &c.

Of Strangers Beasts that come by Escape, 166

For Amerciament in a Leet, 167

Of Goods or Chattels, *Ibid.*

Of putting Cattle distrained into his Yard or Close, 168

In another Man's Yard or Close, *Ibid.*

In the Place where *Damage fasant*, *Ibid.*

Within the County, and within three Miles, 169

Of tendering Amends for the Damage, *Ibid.* & 177

If the Cattle impounded die there, 163, 168, 169

Replevin upon a Distress, 169

(*Vide* *Replevin*.)

Parco fracto upon a Distress, *Ibid.*

Of two Distresses for one Rent, 171

Where no Action against the Lord, tho' nothing due, *Ibid.*

Where he may distrain in the House, tho' he might in the Land, 172

Where for Damage to the Soil, 177

Q 2

How

The T A B L E.

How Distress may be for a Rent-charge,	Page 172
	175
Concerning excessive Distress,	172
Distress of common Right,	173
Not for Debt, &c. or Services incertain,	174
Where Incertainty may be reduced to Certainty,	<i>Ibid.</i>
Where for Supplusage of Rent, having gained	
Seisin thereof,	<i>Ibid.</i>
Where for a <i>Nomine Pæna</i> ,	175
No working an Estray or Distress,	176
Where a <i>Novel Disseisin</i> for want of a Distress, &c.	<i>Ibid.</i>
Distress for Heriots,	176, 177
Distress for surcharging Common,	177
Distress made by Executors, &c.	178
Distress of Beasts escaping,	<i>Ibid.</i>
Of Cattle depasturing,	179
Of Cattle driving to a Market,	181
Cause of Distress, where to be shewn,	180
Where not for Rent reserved upon a Feoffment,	181
Where there ought to be a Clause of Distress,	182
For Rent reserved at two Feasts,	<i>Ibid.</i>
How hindering a lawful Distress may cause Ho-	
micide,	181
Not where a Reversion is determin'd,	183
Upon an Assessment by a Town,	<i>Ibid.</i>
Where by a Grant of the Fealty it becomes a	
Rent-Seck,	<i>Ibid.</i>
Where the Fealty cannot be severed from the	
Reversion,	<i>Ibid.</i>
Upon an Assignment of Rent in Partition or	
Dower,	184
Where sufficient Amends are tender'd	<i>Ibid.</i>
Where	

The T A B L E.

Where preventing a Distress amounts to a <i>Disseisin,</i>	Page 108, 109
How upon the Act 2 W. & M. Sess. 1. cap. 5. <i>For enabling the Sale of Goods distrained for Rent,</i>	187, &c.
How upon the Act made 8 <i>Anna Regina</i> , For the <i>better Security of Rents, and to prevent Frauds committed by Tenants,</i>	192, &c.
Concerning a second Distress for the Residue of Arrears upon the Stat. 17 Car. 2. cap. 7. <i>see</i> <i>Tit. Rescous and Replevin.</i>	

Ejectment.

B Y one Joint-Tenant against another,	117
Proof of actual Entry not necessary in Eject- ment.	150

Entry.

Where the Party, to whom the Rent is reserved, may not enter for the Condition broken,	106
Where a Tenant may grant away his Interest be- fore Entry,	111
Where Entry, &c. will extinguish the Rent,	127

Estovers.

(Vide Common, Trees, Waste.)

Estovers, how appurtenant to the Land, and shall run with the same,	86, 112
Upon a Covenant to have House-boot and Fire- boot,	89
Upon Lessor's destroying the Estovers,	94
Q 3	Of

The T A B L E.

Of the several Kinds of Estovers; viz. 1. House-	
boot, and Fire-boot. 2. Plough-boot. 3. Hedge-	
boot, or Hay-boot.	Page 159, 160
Estovers, Definition thereof,	160
Estovers wasted by Landlord.	163

Exception.

Lessor excepts a Wood: The Law gives him a	
Way to it,	13

Extinguishment.

(Vide *Rent.*)

Extinguishment of Rent,	127
Extinguishment of the Duty of Fencing Closes,	<i>Ibid.</i>
Where of Rent by a Release of all Demands,	128
Where by a Recovery, the Power to make a	
Jointure is extinguished,	<i>Ibid.</i>

Fines.

(Vide *Tenants by Copy.*)

F INES at the Will of the Lord,	28
Fines by Husband and Wife, to make Dis-	
continuance,	75

Firmors, or Farmers.

(Vide *Actions.*)

Concerning him and his Farm,	66, &c.
None to take above two Farms,	288
	How

The T A B L E.

How to be taken by Spiritual Persons,	Page 288
Forfeitures by them for taking Parsonages or Vicarages,	289
Sheep keepers, and Sheep-feeders, concerning them,	290
Beast-feeders, &c.	<i>Ibid.</i>
Several Actions on the Case, necessary to be known by all Farmers, &c.	292, 293, &c.

Forfeitures.

(*Vide Tenants by Copyhold, Waste, &c.*)

Forfeitures by Tenants of Copyhold, &c.	30, 31,
Advantage to Feme-Copyholder, tho' Husband makes a Forfeiture,	33
Copyholders Forfeiture by committing Waste,	37
	<i>Ibid.</i>
Forfeited Estate revived,	38
Forfeiture by deferring Services,	40
Forfeitures for taking to Farm a Vicarage or Parsonage,	289

Grants.

T O whom to be made,	107
How to be made in Remainder,	108
Where not without Recompence,	107
Where the Intent of the Grantor shall be void	108

Habendum.

(*Vide Commencement.*)

C opyholder's Wife not named till after the <i>Habendum.</i>	34
---	----

The T A B L E.

Intent.

HOW the Intent of the Party shall be void
to all Intents, Page 108, 116

Joint-Tenants.

(Vide *Tenant's.*)

Several Matters relating to them, 48 to 53

Lands.

WHAT are comprehended under the Name
Lands, 89
Lands pass not upon a Lease of a House, with
the Appurtenances, 116

Leases.

LEASES Parol and by Indenture, 17, 92
Further concerning Leases, *Chap. II.* Page
66, &c.
Lessor and Lessee, Firmor and Farmer, Ibid.
Of ancient Rents reserv'd on Leases, 68
Of what Lands, &c. Leases reserving Rents
ought to be made, Ibid.
Leases for Years are Chattels, and go to Execu-
tors, if not otherwise disposed of, 69
Long Leases, concerning them, 70
Leases may not be entailed, Ibid. & 141
If it come to be limited in Tail, &c. 70
Who may make Leases, Ibid.
Lea-

The T A B L E.

Leases by Tenant in Tail,	Page 70, 71
By Bishops, &c.	<i>Ibid.</i>
Leases by Statute-Law, how limited,	72
By Tenant in Tail, &c.	<i>Ibid.</i>
To what Leases Stat. 32 H. 8. 28. shall not extend,	<i>Ibid.</i>
By the Husband of the Wife's Land,	73
Leases reserved out of the Statute,	74
By Bishops, &c.	75, 76
By Masters of Colleges, Dean and Chapter, &c.	73
Leases of Benefices or Ecclesiastical Promotion, &c.	76
By Parsons or Curates,	77, 78
Rent upon Leases by Colleges,	79
Leases made void by Stat. 18 Eliz. 11.	80
How the Ordinary must grant Sequestration against an Incumbent offending against Stat. 13 Eliz. 20.	81
Leases confirmed by Stat. 12 Car. 2. c. 31.	82
Leases of the Duchy of Cornwall,	<i>Ibid.</i> & 144
Of the Commencement and Determination of Leases,	83, 137
(<i>Et vide</i> Commencement.)	
Lease from Year to Year, &c.	83
Leases made to hold at Will,	92
Voidable Leases, how to be made void,	83
— Vacated by Order for cancelling,	145
Lease revived by Re-entry of Tenant,	143
Lessee, Acts done by him,	84
(<i>Vide</i> Covenants.)	
Leases made by Durefs, how voidable,	145
Lease of Land, and Stock of Cattle,	86, 123
Concerning Leases by Baron and Feme,	88
Lease of a House and Wood, with Houseboot, &c.	89
	Lease

The T A B L E.

Lease at Will, how determined,	Page 89
Lease for a Year to enable a Release,	90
Leases for Years upon Lives, how determined,	<i>Ibid.</i>
Where Part for Life, and Part for Years,	<i>Ibid.</i>
Reading of Leases, &c. before Sealing,	145
Sealing Leases, concerning it,	91
Variance in Leases, concerning it,	<i>Ibid.</i>
Lease executed by Livery and Seisin,	103
Lease to Joint-Tenants, to be void if one died,	105
Lessor's Intent on a Lease to another and his Heir avoided,	116
Where Lessor takes a Lease of his own Land,	117
Lease for twenty Years made by one who had Power to make a Lease for ten, and decreed to be good for ten,	117
Lessor disturbed in his Passage to Rooms reserved, Covenant lies against the Lessee,	118
Lessee, what Things he may remove,	119
Leases revived and confirmed by Acceptance of Rent, &c.	126
Lease to Husband, with Limitation over to Wife,	134
Lessee for Years makes a Feoffment with Livery,	<i>Ibid.</i>
Where more Acres than named will pass,	<i>Ibid.</i>
Lease by Parson of his Glebe-Lands,	140
By an Infant at 17, of Lands holden in Soccage,	141
Lease avoided by a Widow,	<i>Ibid.</i>
Licence to enter and occupy,	<i>Ibid.</i>
Lease for Life, and mentions not whose Life, how to be taken,	142
Leases by Joint-Tenants,	<i>Ibid.</i>

The T A B L E.

Leases how to be worded, to give present Possession, so as to bring Trespass, Page 144
Lease lost, yet the Term of Years saved, *Ibid.*

Licence.

Licence to put in Cattle by one that has only a third Part, 181
Entry to fetch out Cattle without Licence, *Ibid.*

Livery and Seisin.

Lease executed by Livery and Seisin, 19, 103
Livery made upon a Feoffment by Lessee, 134
Livery and Seisin by Parol, 135
Upon a Feoffment, *Habendum à Die Datus*, *Ibid.*
A Die Confectionis upon a Lease for Life, and Lessee makes Livery a Month after. *Ibid.*
Livery void where a Lessee is upon Part of the Premises, 136

Mines.

MINES in Lands let by Lease, concerning them, 144

Mortgages.

Some Observations concerning them, and Relief against them, 62

Occupancy. (Vide Tenants.)

VIDE Page 108, 109.

Parceners and Partition.

(Vide Tenants.)

Several Matters relating to Partition, 47,
52, 59
Res

The T A B L E.

Re-entry.

W HERE Re-entry is prevented by Distress for Rent,	Page 133
Re-entry upon a Covenant not to alien,	<i>Ibid.</i>
Re-entry by Heir upon Condition of Rent broken,	<i>Ibid.</i>
General Prohibition not to enter another's Possession,	180
Exception to fetch out Cattle running into the Ground,	<i>Ibid.</i>

Remainders.

Remainders limited, and how,	32, 33
Entry by Remainder-Man upon Copyholders being attainted, &c.	33
Surrender by such Remainder-Man,	33, 34
Remainders void in Law,	107

Rents.

Ancient Rents reserved upon Leases,	68
What Rents may, and of what Lands and Tenements,	<i>Ibid.</i>
Rent, though not good by way of Reservation, yet may by way of Contract,	69
Every Quarter's Rent a several Debt,	<i>Ibid.</i>
Payable by an Executor before Bonds,	<i>Ibid.</i>
For the Moiety of Rent against an Assignee,	<i>Ibid.</i>
Where the Rent goeth to the Executors,	93
Where Rent is not acquitted by a Release,	105
Concerning a Rent of ten Shillings granted by two Tenants in Common,	112
That the ten Shillings shall be several,	<i>Ibid.</i>
Of Rent reserved by two Copartners,	<i>Ibid.</i>
Concerning Apportionment of Rent,	<i>Ibid.</i> & 127
Rent accepted from Assignees,	114, 115, 117
Caution concerning Payment of Rent,	120
	Con-

The T A B L E.

Concerning the legal Day of Payment,	Page 120
Where 'tis 15 Days after any of the said Days,	<i>Ibid.</i> & 121
Where the Rent will fall to the Heir, (<i>See after</i>)	121
Where Landlord is to be sought after to receive the Rent,	122
Where he need not pay Rent without an Acquittance,	<i>Ibid.</i>
Where by an Acquittance the Arrearages are discharged,	123
Of Payment before Sun-set,	<i>Ibid.</i>
Payment of Tithe for Glebe-Lands,	<i>Ibid.</i>
Rent reserved upon a Stock let out, when payable,	123
Of Rent reserved by Joint-Tenants,	124
Rent revived upon Death of Tenant in Dower,	<i>Ibid.</i>
Where a Successor of a Parson, &c. accepts Rent reserved by his Predecessor,	125
Upon Acceptance by a Bishop, Lease is confirmed,	<i>Ibid.</i>
So where second Husband accepts the Rent,	<i>Ibid.</i>
<i>Simile</i> upon Acceptance by Wife,	<i>Ibid.</i>
Rent reserved by Tenant for Life determined,	125
<i>Simile</i> by a Tenant in Dower,	126
Where the Acceptance renews a Lease for Life,	<i>Ibid.</i>
Rent extinguished by Entry, &c.	127
Where revived, and where not,	<i>Ibid.</i>
Where Duty of fencing Closes is extinguished,	<i>Ibid.</i>
Of the Demand and Tender of Rent, and the Time when,	128
Reservation of Rent, how to be made,	130
Rent, how transferr'd to an Assignee,	<i>Ibid.</i>
Where the Rent shall go to the Heir for the apparent Intent,	131
Where	

The T A B L E.

Where the Rent is reserved generally, and not said to whom,	Page 131
Where the Rent is reserved to the Son, and not as Heir,	132
Rent reserved upon a Demise, when the Reserva- tion shall happen,	<i>Ibid.</i>
Rent distrained for, prevents Re-entry of Land- lord,	<i>Ibid.</i> & 133
Reservation upon a Rent-Charge against Sureties and Pledges, is void,	209
Where the Rent upon a Gift in Fee of Land is reserved to a Stranger,	106
Rent paid to a Husband <i>de Facto</i> , the Tenant dis- charged,	118
Rent, how to be demanded to take Advantage of a Re-entry,	146
Rent must be paid, tho' the Tenant be kept out of Possession by Military Force, &c.	147
Rent once accepted, the Lessor cannot take Ad- vantage of a Re-entry,	148
Rent, Covenant will not lie for it in <i>England</i> for Lands in <i>Ireland</i> ,	149

Repairs.

(Vide *Covenants* and *Waste*.)

How the Tenant may cut Timber to repair upon the Landlord's Covenant,	221
Of the Writ <i>De Reparatione facienda</i> between Joint-Tenants,	221

Rescous.

(Vide *Distress*.)

Rescous, what it is,	202
Rescous, where Goods are distrained without Cause,	180
Ref-	

The T A B L E.

Rescous, where no Rent is due,	Page 203
Where he tenders his Rent to the Lord,	<i>Ibid.</i>
Where the Lord distrains in the Highway,	<i>Ibid.</i>
Where he distrains <i>Averia Caruca</i> , or Things not distrainable,	<i>Ibid.</i>
Where the Lord may follow with fresh Suit,	204.
Where the Lord hath not Sight or View,	<i>Ibid.</i>
Where he hath View, and distrains out of his Fee,	<i>Ibid.</i>
Rescous return'd and void,	<i>Ibid.</i>
Where the Distress is intended for <i>Damage fe- sant</i> ,	<i>Ibid.</i> & 205

Replevin.

(Vide *Distress*.)

Sheriffs Deputies for Replevin, by Stat. 1 & 2 <i>Ph. & Mar. cap. 12. &c.</i>	205
<i>Replegiari facias</i> at Common Law,	206
Tenant is Plaintiff,	<i>Ibid.</i>
<i>Withernam</i> , where it may be had,	<i>Ibid.</i>
Replevin to Bailiff of a Franchise,	207
Where the Sheriff may enter,	<i>Ibid.</i>
Where Property is claimed by Defendant,	&c. 207, 208
<i>Recordare</i> to remove the Plaint,	<i>Ibid.</i>
<i>Simile</i> by a <i>Pone</i> .	209
Reservation for Distress irrepleviable, is void,	<i>Ibid.</i>
Several Men may not join in Replevin,	<i>Ibid.</i>
Upon a Distress driven into another County,	210
Of dead and living Cattle,	<i>Ibid.</i>
By Husband alone,	<i>Ibid.</i>
Of Declaratron in Replevin,	<i>Ibid.</i>
	Re-

The TABLE.

Replevin against the Lord, tho' the Cattle be come back,	Page 210
Caution of giving Instructions in Replevin,	<i>Ibid.</i>
Avowry in Replevin, concerning it,	211
Making Conufance as Bailiff,	<i>Ibid.</i>
Manner of Avowries,	<i>Ibid.</i>
Plaintiff's Advantage,	212
Costs and Damages for the Defendant,	213
Where Part of the Rent is not due,	<i>Ibid.</i>
For Rent, and <i>Nomine Pana</i> ,	<i>Ibid.</i>
Bar to an Avowry,	<i>Ibid.</i>
That they were the Beasts of a Stranger,	214
Arrearages of Rent lost by the Lord,	<i>Ibid.</i>
If the Plaintiff in Replevin be non-suit, barr'd or overthrown,	215
(Vide Page 197, &c. for Stat. 17 Car. 2. c. 7.)	

Seisin.

(Vide Livery.)

W HERE the Lord hath gained Seisin for more Rent than due,	174, 175
---	----------

Seizure.

By Lord, until Tenant come to be admitted,	34
By Lord, in what Cases, &c.	33

Statutes explained, &c.

<i>Mag. Char. cap. 10.</i> Of the Writ, <i>Ne injuste vexes</i> ,	175
<i>Stat. Marlbr. cap. 4.</i> Of excessive Distresses, &c.	172
<i>Marlbr. c. 21.</i> and <i>Westm. 1. c. 17.</i> Of driving Distresses, &c.	266
<i>Westm. c. 1.</i> Of Estates entailed,	7
21 <i>H. 8. c. 19.</i> Of Avowries,	212
23 <i>H. 8. c. 13.</i> Of keeping Stoned Horses,	291
25 <i>H. 8. cap. 13.</i> Of keeping Sheep,	289
27 <i>H. 8.</i>	

The T A B L E.

27 <i>H. 8. cap. 6.</i>	Of keeping Mares in Parks,	Page 291
2 & 3 <i>P. & M. cap. 3.</i>	Of feeding Sheep, Cows, &c.	<i>Ibid.</i>
43 <i>Eliz. c. 7.</i>	Of cutting or stealing Wood,	230
7 <i>Jac. 1. c. 12.</i>	Limitation of Shop-Book Debts,	285
21 <i>Jac. 1. c. 16.</i>	Limitation of Entries,	42, 63
15 <i>Car. 2. c. 2.</i>	For punishing Wood-Stealers,	230
17 <i>Car. 2. c. 7.</i>	Of Distresses and Avowries,	197
29 <i>Car. 2. c. 3.</i>	Of Frauds touching Leases by Parol, &c.	17, 18
29 <i>Car. 2. c. 3.</i>	Of Frauds, &c. in Bargains, Contracts, &c.	280, &c.
2 <i>W. & M. cap. 5.</i>	Of selling Distresses,	187, &c.
4 & 5 <i>W. & M. c. 16.</i>	Of Mortgages without Notice,	64
7 & 8 <i>W. 3. c. 17.</i>	Licence to alien in Mortmain,	18
3 & 4 <i>Anna, c. 9.</i>	Of Promissory Notes,	286
4 & 5 <i>Anna, c. 16.</i>	§ 17. Of commencing Acti- ons after Entry,	42
—	§ 10. Of dispensing with Attornment,	115
4 & 5 <i>Anna, c. 16.</i>	§ 15, 16. Of pleading dou- ble, and of Costs,	200
—	§. 28. Of Account against Executors, &c.	58
8 <i>Anna, c. 17.</i>	For securing Rents, and to pre- vent Frauds by Tenants,	193
<i>Vide</i>	several Statutes touching Leases by Bishops, Dean and Chapters, Prebends, Parsons, &c.	71, &c.
<i>Quer.</i>	A Statute confirming an Order of Court,	145

The T A B L E.

Surrenders.

(Vide *Tenants.*)

By Copyholder, in Consideration of Marriage, or Payment of Money,	Page 31
By a Remainder-Man where nothing passes,	32
By him in Remainder of Copyhold Lands,	34
Into the Hands of two Copyholders,	35
By an Attorney, of a Copyhold Estate,	<i>Ibid.</i>
By Copyholder for Life, and Copyholder in Fee,	36
By Infant Copyholder,	<i>Ibid.</i>
By Husband of Woman Copyholder,	36
By Heir, to a Stranger after Entry, and before Admission,	<i>Ibid.</i>
By Copyholder after Forfeiture,	37, 38
Where a new Lease amounts to a Surrender in Law,	113
If Surrender can perfect without Acceptance, &c.	138, 139
Lessee cannot surrender before his Term begin,	113

Tenants and Tenures.

T HE several Kinds thereof,	1, 2, 3
Tenants in Fee-Simple,	5
Incumbrances and Forfeitures of Fee-Simple E- states,	<i>Ibid.</i>
Tenant in Fee-Tail,	6
General and Special Tail,	7, &c.
Special with Limitation,	8
Tail Tenures, becoming extinct,	<i>Ibid.</i>
Tail Tenures, Incumbrances,	9
General Perpetuity in Estates settled by the Stat. <i>De Donis, &c.</i>	<i>Ibid.</i>
Estates dock'd by a Common Recovery,	10
Entry by the Donor,	11
Tenant in Tail after Possibility of Issue extinct,	11
Who	

The T A B L E.

Who may be so,	Page 11
Tenant by the Courtesy of <i>England</i> ,	12, 46
Tenant in Dower,	12, 13
Dower at Common Law,	13
Dower by the Custom,	<i>Ibid.</i>
Tenant for Life,	15
Livery and Seisin upon Lease for Life,	<i>Ibid.</i>
Reverter of Estate after a Partition between Tenants for Life.	142
Tenant for Years by Lease,	16
By Lease Parol,	17
When Lease for Years takes Right,	20
Tenant at Will,	21
Tenant at Will, if he sows, shall reap,	<i>Ibid.</i>
Not so in Tenant for Years,	22
Tenant at Will not bound to Repairs,	23
If Tenant at Will commits voluntary Waste, &c.	<i>Ibid.</i>
Tenant at Sufferance,	23, 24
Tenant by Copy of Court-Roll,	25
How such Tenant may or may not alien his Estate,	26
Of the Properties of a Custom, and the several Ulages thereof,	27, 28
Copyholder fined at the Lord's Will,	28
His Admission without Fine,	29, 35
(<i>See after</i>)	
Work Days of such Tenants,	29
<i>Inter-user</i> for Rent,	<i>Ibid.</i>
Deferring of Services,	40
<i>Abuser</i> by Cattle, (<i>See Tit. Common.</i>)	29
Prescription by Copyholder to hold by Fealty,	30
By the Lord not to hold his Court,	31
Surrenders by Copyholder in Consideration of Marriage, or Payment of Money,	<i>Ibid.</i>

By

The T A B L E.

By an Infant, by an Husband, &c.	Page 36
Forfeitures by Copyholders,	31
Custom for Copyholders to have the sole Feed- ing,	32
To licence others to put in their Beasts,	32
(For these, see more in the <i>Doctrine</i> concerning <i>Common, &c. Chap. VII.</i>)	234
If a Copyholder be attainted or convict of Felony,	33, 35
Copyhold-Land of the Tenure of Burrough <i>Eng- lish,</i>	35
If Copyholder cut Trees,	37
Copyhold extinguished,	<i>Ibid.</i>
Advantage to Feme-Covert Copyholder,	37
If Copyhold surrender'd, be determined by the Lord's making a Lease,	38
Copyhold Estate forfeited and revived,	<i>Ibid.</i>
Copyhold by Escheat re-granted,	39
That Fines of Copyholders ought to be reasona- ble,	<i>ibid.</i>
That the Time to pay them ought to be reasona- ble,	40
Fine not due until Admittance,	<i>Ibid.</i>
What Fine,	41
Where a Fine certain is tender'd,	41
Copyhold-Land within the Statute of Limitation of Entries,	42
Tenants by the Verge, concerning them,	<i>Ibid.</i>
Tenants in Coparcenary, concerning them,	45
Of Sisters, Aunts, &c.	46
Partition by Coparceners, and Tenant by Cour- tesy,	<i>Ibid.</i>
Parceners by Custom of Gavelkind,	47
Difference between Coheirs and Copartners,	49
Joint-Tenants, concerning them,	48
by Disseisin, &c.	<i>Ibid.</i>
Sur-	Sur-

The T A B L E.

Survivorship amongst them,	Page 49
Upon a Lease,	<i>Ibid.</i>
Of Goods, &c.	Page 47
Of Leases by them,	142
Where they shall have several Inheritances,	50
If one of the Donees and his Issue also dies,	51
Where one grants a Rent-Charge to the other,	<i>Ibid.</i> & 52
Ejectment by one Joint-Tenant against another,	117
Joint-Tenants may make Partition by Consent,	52
How, amongst such Tenants, the Husband and Wife but as one,	53
How Joint-Tenants become Tenants in Common,	54
Tenants in Common, concerning them,	53, 54
How Tenants in Common from Joint-Tenant,	<i>Ibid.</i>
How between Feoffor and Feoffee,	55
How between Tenants for Life,	<i>Ibid.</i>
How when one of them for Life grants away his Part to one of his Fellows,	56
How when one of the three Joint-Tenants releases to one of his Fellows,	56
How when a Man, his Wife, and a third Person are Joint-Tenants, and the third Person releaseth to the Husband,	56
How if the third Person releaseth to his Wife,	57
Tenants in Common by Prescription,	<i>Ibid.</i>
What Actions brought by them.	<i>Ibid.</i> & 58
How an Action lies by one Tenant in Common, his Executors and Administrators, against the other, by Stat. 4 & 5 <i>Anna</i> , c. 16.	58
The like between Joint-Tenants, where one receiveth more than his Share,	<i>Ibid.</i>
Partners by divers Descents, of Actions and Partitions by them,	59

The T A B L E.

Of Leases made by them,	Page 60
Tenants in Common by divers Titles, concerning their Executors, &c. as to Chattels Real and Personal,	61
Tenants in ancient Demefne, &c. concerning them,	62
Tenants by Occupancy,	108, 109
How Occupancy may be prevented, &c.	Ibid.

Trees.

(Vide *Estovers, Waste.*)

Windfalls, who shall have them,	161
What Property Lessees have in Trees,	162
Concerning Trees cut down by a Stranger,	Ibid.

Use.

U PON leasing or granting the Use of a Pump, or other Thing,	94
--	----

Waste

B Y Copyholder makes a Forfeiture,	37
Waste by Lessee reliev'd in <i>Chancery</i> ,	88
Concerning Leases made to hold without Im- peachment of Waste,	Ibid. & 226
Concerning Trees cut, and Houses pull'd down, by Tenant for Life,	161
Concerning Windfalls,	ibid.
Waste; where the Lessor may enter for Waste done, and where not,	148
Caution to Tenants against committing Waste,	216
By pulling down Houses or Walls, &c.	ibid.
Glass-Windows, Wainscot, or Doors fixed,	217
By building a new House,	ibid.
By Tenants of Parks, Warrens, or Dove-houses,	ibid.
By felling Timber-Trees, double Waste,	ibid.
	Waste

The T A B L E.

Waste in Houses, Gardens, or Timber-Trees,	Page 218
What Trees are accounted Timber,	<i>ibid.</i>
Waste in Willows, Birch, Hazels, Quick-hedge, &c.	<i>ibid.</i>
Waste by House-burning,	219
Waste in Woods, Fruit-Trees, &c.	<i>ibid.</i>
Digging Gravel, Stones, or Mines,	<i>ibid.</i>
Suffering Sea-Banks, &c. to decay,	<i>ibid.</i> & 220
By converting into Wood or Meadow,	220
The Punishment and Forfeiture in Waste,	<i>ibid.</i>
How the Action lies,	220
Not against Guardian or Tenant by <i>Elegit</i> ,	<i>ibid.</i>
Not against Tenant at Will,	221
But against a Tenant in Mortgage,	<i>ibid.</i>
Of a Writ of Reparation among Joint-Tenants,	<i>ibid.</i>
Where, upon Landlord's Covenant to repair,	
Lessee may cut Timber,	<i>ibid.</i>
Who must have the Action for Waste,	<i>ibid.</i>
Who must join in the Action,	222
Of a Surrender after Waste committed,	<i>ibid.</i> & 225
If Waste be committed by a Stranger,	222
If by one against whom the Tenant can have no Remedy,	227
If where the Landlord covenants to deliver Timber, but fails,	222
If it be to be taken out of the Lands,	223
Waste committed by the Husband, and Wife punished, &c.	<i>ibid.</i>
Where, after the Lease, the Reversion is granted away,	<i>ibid.</i> & 224
Lease determines pending the Action,	224
Recovery upon the Death of <i>Cestui que vie</i> after Waste,	224
What shall be recovered upon Waste in Woods,	<i>ibid.</i>
So	

The T A B L E.

So in Houses or Hedge-Rows,	Page 294, 295
Pleas in Bar to a Writ of Waste,	<i>ibid.</i>
That he re-built before an Action brought,	229
Abatement of the Writ in Waste,	225
Where the Tenant grants a Rent-charge, and after commits Waste,	226
Where Action lies after a Release,	<i>ibid.</i>
Plea that a Grantee hath nothing in the Rever- sion,	227
Waste by Lessee before his Term begins,	<i>ibid.</i>
If House be uncovered before his Entry,	<i>ibid.</i>
Where the Waste happens by sudden Tempest, &c.	<i>ibid.</i> & 228
Who shall have the Timber, &c.	228
Of re-building it by the Tenant.	<i>ibid.</i>
Of removing Furnaces,	<i>ibid.</i>
Digging Land, &c. for bettering the Ground,	228
Forfeiture by Copyholder for Waste,	37, 38

Wood.

(Vide antea *Waste*)

Some Observations upon the Statutes concer- ning the cutting, spoiling, and stealing of Wood,	230, &c.
---	----------

Words.

Of Words amounting to a Covenant,	303
-----------------------------------	-----

F I N I S.

*Ex. J. M.
12/27/07*